IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-513

LOS ALAMOS SCHOOL BOARD, *Petitioner,*

vs.

HARRY WUGALTER, Chief of Public School Finance Division of the Department of Finance and Administration; VINCE MONTOYA, Director of the Dept. of Finance and Admin., LEONARD J. DELAYO, Superintendent of Public Instruction of the State of New Mexico, JESSE D. KORNEGAY, State Treasurer of the State of New Mexico.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

*Of Counsel*

RODEY, DICKASON, SLOAN,
AKIN AND ROBB, P.A.
20 First Plaza
Albuquerque, New Mexico 87103

RICHARD C. MINZNER
20 First Plaza
Albuquerque, New Mexico 87103
Telephone: (505) 765-5900

*Attorney for Petitioner*

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

## TABLE OF CONTENTS


| | Page |
|---|---|
| OPINIONS BELOW | 1 |
| JURISDICTION | 2 |
| QUESTION PRESENTED | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 2 |
| STATEMENT OF THE CASE | 3 |
| REASONS FOR GRANTING WRIT | |
| The Decision Of The Court Of Appeals Is Wholly Inconsistent With Clear Principles Announced By This Court In *Jones* v. *Rath Packing Company*, 97 S.Ct. 1305 (1977); *Kewanee Oil Company* v. *Bicron Corporation*, 416 U.S. 470 (1974); *Perez* v. *Campbell*, 402 U.S. 637 (1971); *Hines* v. *Davidowitz*, 312 U.S. 42 (1941) And Other Cases | 6 |
| CONCLUSION | 14 |


## TABLE OF AUTHORITIES

CASES:


| | |
|---|---|
| Goldstein v. California, 412 U.S. 546 (1973) | 11, 12 |
| Hines v. Davidowitz, 312 U.S. 42 (1941) | 6, 7 |
| Jones v. Rath Packing Company, 97 S.Ct. 1305 (1977) | 6, 7 |
| Kewanee Oil Company v. Bicron Corporation, 416 U.S. 470 (1974) | 6, 7 |
| McCulloch v. Maryland, 4 Wheat, (17 U.S.) 316 | 9 |
| Merrill Lynch, Pierce, Fenner & Smith v. Ware, 414 U.S. 117 (1973) | 11 |
| New York Dept. of Social Services v. Dublino, 413 U.S. 405 (1973) | 11 |
| Perez v. Campbell, 402 U.S. 637 (1971) | 6, 9 |
| Savage v. Jones, 225 U.S. 501, 533 (1912) | 7 |


UNITED STATES CODE:


| | |
|---|---|
| 28 U.S.C. § 1331 | 3 |
| 42 U.S.C. § 2391 | 4, 5 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

---

No.

---

LOS ALAMOS SCHOOL BOARD, *Petitioner,*

vs.

HARRY WUGALTER, Chief of Public School Finance Division of the Department of Finance and Administration; VINCE MONTOYA, Director of the Dept. of Finance and Admin., LEONARD J. DELAYO, Superintendent of Public Instruction of the State of New Mexico, JESSE D. KORNEGAY, State Treasurer of the State of New Mexico.

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

---

The Petitioner, Los Alamos School Board, prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Tenth Circuit rendered in these proceedings on May 31, 1977.

### OPINIONS BELOW

*Tenth Circuit.* The opinion of the court below in this case (Appendix A, *infra*) is reported at 557 F.2d 709 (1977).

The order of the court below denying Petitioner's motion for a rehearing *en banc* or alternatively for a rehearing (Appendix B, *infra*) is not reported. The Court rendered no opinion with the order.

*District Court.* The opinions of the District Court finding for the Petitioner, granting the relief requested, and dismissing defendants' third-party claims against certain federal officials (Appendix C, *infra*) are not reported.

## JURISDICTION

The judgment of the Court of Appeals was entered on May 31, 1977. A timely petition for a rehearing *en banc* or alternatively for a rehearing was filed on June 21, 1977 and denied on July 27, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED

Whether the Supremacy Clause of the United States Constitution permits a state to attempt to "equalize" its school districts by reduction of its own funding of a single district solely because that school district receives federal funds under the Atomic Energy Communities Act, 42 U.S.C. § 2301 *et seq.*, which funds are intended to make the schools of that district superior.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Art. VI, Clause 2:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the Supreme law of the land; and the judges in every state shall be bound thereby, any-



> thing in the Constitution or laws of any State to the contrary notwithstanding."

The relevant portions of the Atomic Energy Communities Act, 42 U.S.C. § 2301, *et seq.*, and the Public School Finance Act, N.M. Stat. Ann. §§ 77-6-1 *et seq.* (Supp. 1975) are included as Appendix D to this Petition.

## STATEMENT OF THE CASE

This action was commenced by the Los Alamos School Board against the administrators of the New Mexico Public school funding program in the United States District Court for the District of New Mexico. Jurisdiction of the District Court was invoked under 28 U.S.C. § 1331.

This action is a challenge to a part of the New Mexico Public School Finance Act, which consists of two entirely different public school funding schemes. N.M. Stat. Ann. § 77-6-1, *et seq.* (Supp. 1975.) The first of these provides a general formula for providing state aid to each school district within the state except Los Alamos. N.M.Stat. Ann. § 77-6-18.1 through 18.8 and 19 (A through E) (Supp. 1975.) Under this formula, the statutorily defined "program costs" and "revenues" are computed. The "costs" minus the "revenues" is the amount of "state equalization guarantee distribution" provided to the district. (See § 19, p. 47a herein.)

The second provision, § 19(G) [1] of the statute, pre-

[1] N. M. Stat. Ann. § 77-6-19(F) (1953). After the trial of this case but prior to entry of judgment by the District Court the New Mexico Public School Finance Act was amended and the challenged subsection is now codified as N. M. Stat. Ann. § 77-6-19(G) (Supp.

scribes less generous state aid for any districts (only Los Alamos) receiving funds under 42 U.S.C. § 2391, the operative school funding provision of the Federal Atomic Energy Communities Act, *expressly because* of the receipt of such federal aid:

> "Notwithstanding the methods of calculating the state equalization guarantee distribution [described above] . . . if a school district receives funds, under section 2391 of Title 42 U.S.C.A. . . . the amount of the state equalization guarantee distribution . . . [shall be computed according to a different formula]."

The Atomic Energy Communities Act was promulgated by Congress in 1955 to facilitate the disposal of the federal ownership of certain federally-created communities. Los Alamos was included in the Act in 1962. Congress recognized that those communities needed substantial assistance to maintain the level of community services that would attract people necessary to maintain and operate this country's atomic energy facilities. In particular, Congress recognized that

> "[The Atomic Energy Commission] has established a high level of services in its communities and *especially in the school systems* . . ." [emphasis added] Senate Report 1140 (accompanying S.2630, which became PL 84-221, 42 U.S.C. 2301 et seq.) 1955 U.S. Code, Cong. and Admin. News, at 2635.

---

1975). The challenged subsection will be referred to as subsection 19(G) in this petition. Since entry of that judgment the Atomic Energy Communities Act was amended. The amendments to both statutes are irrelevant to this case. Appendix D hereto includes the statutes as they were in effect at the time of the decision by the District Court.



In order to maintain the requisite high level of services, Congress authorized local assistance payments under 42 U.S.C. § 2391.

During the 1975-1976 school year, the Los Alamos School Board received as a state equalization guarantee distribution $475,000 less than it would have received if it had received no local assistance payments under the Atomic Energy Communities Act. The difference in the prior year was approximately the same amount. 557 F.2d at 711. (p. 5a herein.)

The District Court, after trial, granted judgment for Los Alamos. Its reasons for doing so were summarized in its opinion:

> "Los Alamos is treated differently because it receives AEC [Atomic Energy Commission] funds. If the state is attempting to manipulate federal funds received by the District, the state statute cannot stand.
>
> I think that Congress clearly intended AEC Assistance payments as a supplement rather than a substitute for local and state funding. Subsection (e) of § 2391 indicates that Congress intended that entities receiving assistance, would eventually become self-sufficient, but it recognized the fact that the transition had to be gradual and supported by the AEC to achieve AEC goals. Section 2391(c) expresses Congress' intent that the payments are for special burdens [imposed by the Federal government].
>
> The state's attempts to equalize educational opportunities for all public school children is commendable, but cannot be accomplished at the expense of federal programs of national importance. If the state wishes to avoid the conflict between its programs and those validly enacted by the federal government, it must seek relief in Congress and not here. Section 77-6-19F violates the Supremacy

Clause and is, therefore, unconstitutional." Slip Opinion of Judge Mechem, at 8, 9. (pp. 26a, 27a herein.)

Because the general funding scheme of the New Mexico Public School Finance Act is comprehensive in language and application, the determination that the special formula for Los Alamos is unconstitutional caused Los Alamos to come under the general funding scheme. The Defendants appealed this judgment to the United States Court of Appeals for the Tenth Circuit. That court apparently adopted the findings of the District Court, agreeing that

> "the primary reason AECA funds are given to [petitioner] is to provide Los Alamos with a high quality system which will not impede the recruitment and retention of personnel essential to the Atomic Energy program. The effect of the challenged subsection is to provide [petitioner] with less school aid solely because it receives AECA funds." 557 F.2d at 715. (p. 12a.)

However, over a dissent, the Court of Appeals reversed the judgment of the trial court; the petition for rehearing was refused, also by a divided court.

## REASONS FOR GRANTING WRIT

### The Decision Of The Court Of Appeals Is Wholly Inconsistent With Clear Principles Announced By This Court In *Jones* v. *Rath Packing Company*, 97 S.Ct. 1305 (1977); *Kewanee Oil Company* v. *Bicron Corporation*, 416 U.S. 470 (1974); *Perez* v. *Campbell*, 402 U.S. 637 (1971); *Hines* v. *Davidowitz*, 312 U.S. 42 (1941) And Other Cases

The Court of Appeals held that the New Mexico Public School Finance Act was not in conflict with the Atomic Energy Communities Act because there was no "clear manifestation of intent" (557 F.2d at 714, p. 12a herein) to prohibit state legislation partially offsetting the effect of the grant of federal funds. The Court of Appeals erred in failing to infer a clear but implicit prohibition from the announced purposes of the federal act and from the only section of the act which deals with state and local funding.[2]



This niggardly application of the federal statute is inconsistent with the principle recently reaffirmed by this Court in *Jones* v. *Rath Packing Co.*, —— U.S. ——, 97 S.Ct. 1305, 51 L.Ed. 604 (1977):

> "Our task is to determine whether under the circumstances of this particular case [the state's] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Hines* v. *Davidowitz*, 312 U.S. 52 (1942)" (other citations omitted.) 97 S.Ct., at 1309.

*Kewanee Oil Company* v. *Bicron Corporation*, 416 U.S. 470 (1974) phrases the test to be applied slightly differently:

> "[W]hen state law touches upon the area of federal statutes enacted pursuant to constitutional authority, it is 'familiar doctrine' that the federal policy 'may not be set at naught, or its benefits denied' by the state law. [citation omitted] This is true, of course, even if the state law is enacted in the exercise of otherwise undoubted state power." 416 U.S., at 479, 480.

The New Mexico Public School Finance Act tends to equalize the total amount of funding available from all

---

[2] It is clear that prohibition of state legislation need not be express, ". . . the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is express." *Hines* v. *Davidowitz*, 312 U.S. 52, 68 (1941); *Savage* v. *Jones*, 225 U.S. 501, 533 (1912).

sources to school districts within New Mexico; that is its avowed purpose as found by both Courts below. 557 F.2d at 713. (p. 9a herein.) However, in so doing, it diminishes the intended impact of the Atomic Energy Community Act funds on the Los Alamos School District.

In passing the Atomic Energy Communities Act, Congress found that:

> "The continued morale of project-connected persons is essential to the common defense and security of the United States." 42 U.S.C. § 2302(a).

Congress also declared that:

> "It is the purpose of this chapter to effectuate the policies set forth above by providing for—
>
> (a) the maintenance of conditions which will not impede the recruitment and retention of personnel essential to the atomic energy program;
>
> (b) the obligation of the United States to contribute to the support of municipal functions in a manner commensurate with—
>
> (1) the fiscal problems peculiar to the communities by reason of their construction as national defense installations, and
>
> (2) the municipal and other burdens imposed on the governmental or other entities at the communities by the United States in its operations at or near the communities; . . ."

These purposes are clearly inconsistent with an attempt to "equalize." The intent reflected in the above paragraphs is to increase the resources of only Los Alamos. There is no intent to allow New Mexico to indirectly divert this aid to its treasury or its other school districts. In fact, the intent is not only to improve Los



Alamos absolutely, but to make it a more attractive place to live relative to other communities, so "equalization" is directly counter to the objective.

In *Perez* v. *Campbell,* 402 U.S. 637 (1971) this Court held that the mere fact that a state law may, independently, serve some useful and reasonable state purpose is insufficient to save the statute if it conflicts with the purpose, whether express or implied, of any federal statute. 402 U.S., at 651, 652. In that case neither the statute nor legislative history contained an express prohibition against the state legislation there involved. This Court reaffirmed "the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause", 402 U.S., at 651.

The principle stated in *Perez* is one of long standing importance, recognized since the inception of the Republic and noted by this Court as long ago as 1819 in *McCulloch* v. *Maryland,* 4 Wheat, (17 U.S.) 316:

> "From the earliest days on, it has unbrokenly been held that a state may not 'retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress' . . . ." 4 Wheat., at 436.

If the Court of Appeals had given due weight to the purposes of the Atomic Energy Community Act, it would have affirmed the judgment of the District Court. As Judge Doyle recognized in his dissent in this case:

> "The majority does not apply [the] general legislative purposes [of the Act] to schools. Congress had, however, expresed an intent to maintain a high level of services in order to attract and retain

> personnel of high caliber who can contribute to the common defense and security of the United States . . .
>
> The clear *effect* of withdrawal of state support to these schools will be a very substantial diminution in funding. It will require the United States to reexamine the sufficiency of its contribution. Undoubtedly it will have to supplement to the extent that the state has withdrawn funds. In my judgment this is a direct frustration of the Congressional intent." Dissenting Opinion of Judge Doyle, 557 F.2d at 716. (p. 15a herein.)

Therefore, the decision below is inconsistent with the Congressional intent to aid only Los Alamos as expressed in the findings and purposes.

In addition, in a provision of the statute not discussed by the Court of Appeals, Congress clearly stated that the federal aid provided under the Atomic Energy Communities Act is intended to be kept to a minimum, and that, to the extent possible, it is to be reduced. The Act points out that this can be done only if other aid is maximized:

> "In exercising the authority of subsection (a) of this section [which authorizes local assistance] the Commission shall assure itself that the governmental or other entities receiving assistance hereunder utilize all reasonable, available means to achieve financial self-sufficiency *to the end that assistance payments by the Commission may be reduced or terminated at the earliest practical time.*" 42 U.S.C. § 2391(e). (Emphasis supplied.)

This provision, of course, directly pertains to the duty of the Commission in disbursing aid. However, the express Congressional intent to minimize the fed-



eral aid, and the express directive of Congress to the Commission and the School Board to obtain maximum assistance elsewhere, makes it inconceivable that Congress simultaneously intended to allow the state in effect to take credit for this aid and therefore, provide less money than it otherwise would provide. The Congressional intent is absolutely clear that in the event the objectives of the Communities Act can be achieved with less funding, it is to be the federal, not the state or local effort which should be reduced.

The Court of Appeals held that "where the conflict is only a potential one or peripheral to the purpose of the federal statute, state legislation will be allowed to stand" relying on three 1973 cases. 557 F.2d at 714. (p. 12a herein.) *Merrill Lynch, Pierce, Fenner & Smith* v. *Ware,* 414 U.S. 117 (1973); *New York Dept. of Social Services* v. *Dublino,* 413 U.S. 405 (1973); and *Goldstein* v. *California,* 412 U.S. 546 (1973). This ignores the fact that a discounting or diversion of federal funds directly and actually conflicts with the intent of the federal authorization and appropriation of funds. This is true regardless of whether Los Alamos can show a specific scientist who would have come to work at the Los Alamos Scientific Laboratories if the school system had $475,000 more. (The Court of Appeals strongly implied that plaintiff had to prove the propriety of the funding level set by the federal government by showing an actual impact on recruitment at the Scientific Laboratories resulting from the School Finance Act. 557 F.2d at 715.) In addition, in each of the three cases mentioned, the conflict between state and federal law was more feigned than real. In both the *Merrill Lynch, Pierce, Fenner & Smith* and *Dublino* cases, the United States filed a brief supporting the *state* position that

there was no conflict. In *Goldstein,* although the United States did not appear, the Court recognized the position taken by the United States Register of Copyrights that there was no conflict between the federal and state law. The instant case presents an entirely different problem. A representative of the Energy Research and Development Administration testified in support of petitioner at trial. One of the Exhibits introduced at trial was a letter from the General Manager of the United States Atomic Energy Commission Commission (the predecessor of ERDA) to several Congressmen. That letter declared in part:

> "The reduction of State equalization funds to the Los Alamos District on the basis of receipt of AEC assistance payments under the Community Act is in the opinion of the Atomic Energy Commission discriminatory and illegal.
>
> The Los Alamos School District has decided to initiate action to declare Section 77-6-19F of H.B. 85 invalid. Under the provisions of the Community Act, the Los Alamos Schools are charged with obtaining all the revenues reasonably available and the the action to challenge the legality of Section 77-6-19F of H.B. 85 appears to help assure that this responsibility is being met.
>
> The Commission further believes that Section 77-6-19F of H.B. 85 raises constitutional questions involving the relationship of State and Federal Governments. While the Commission might avoid raising these questions by suspending all assistance payments to the Los Alamos School District, it does not now plan to do so because of its belief that Section 77-6-19F will be declared invalid and because complete suspension of payments would impede recruitment or retention of personnel essential to the atomic energy program."



Also, in the District Court the New Mexico defendants attempted to join as third-party defendants the federal officials responsible for administering the Communities Act and to enjoin their enforcement of it. (See pp. 34a, 35a herein.) This is not a feigned controversy. The United States and the state have both participated, adverse to each other, to protect their inconsistent interests in this action.

The impact of the New Mexico statute on the operation of the Atomic Energy Communities Act is summarized by Judge Doyle:

> "It is true that New Mexico has not attempted to regulate directly in this area of federal interest. However, by going in through the back door, so to speak, in an effort to save state funds and to increase the burden of the federal government, it has created a greater interference than could have been possible through direct means." Dissenting Opinion of Judge Doyle, 557 F.2d at 716. (p. 16a herein.)

The power of the state to regulate its public schools is not in issue here. The authority of the state to distribute equitably funds to local school districts is not in issue here. The only issue here is whether the state may reduce its own aid to a school district *solely* because that district receives supplemental aid that the federal government has decided is necessary to accomplish the purpose of a federal statute. The Court of Appeals has announced that the state may reduce its aid under such circumstances, and that a state statute may partially offset the intended effect of a federal act in the absence of an express prohibition in the statute or legislative history. This is a far-reaching principle inconsistent with the Supremacy Clause of the United States Con-

stitution as construed in the prior decisions of this Court.

## CONCLUSION

For the above reasons, petitioner respectfully prays that a Writ of Certiorari be granted.

*Of Counsel*

RODEY, DICKASON, SLOAN,
AKIN AND ROBB, P.A.
20 First Plaza
Albuquerque, New Mexico 87103

RICHARD C. MINZNER
20 First Plaza
Albuquerque, New Mexico 87103
Telephone: (505) 765-5900

*Attorney for Petitioner*

# APPENDIX

## APPENDIX A

### Court of Appeals Opinion

UNITED STATES COURT OF APPEALS, TENTH CIRCUIT.

No. 75-2000.

LOS ALAMOS SCHOOL BOARD, *Plaintiff-Appellee,*

v.

HARRY WUGALTER, Chief of the Public School Finance Division of the Department of Finance and Administration, Vince Montoya, Director of the Department of Finance and Administration, Leonard J. Delayo, Superintendent of Public Instruction of the State of New Mexico, Jesse D. Kornegay, State Treasurer of the State of New Mexico, *Defendants-Appellants.*

Argued and Submitted Nov. 16, 1976.

Decided May 31, 1977.

Rehearing Denied July 27, 1977.

• • •

Before LEWIS, Chief Judge and BARRETT and DOYLE, Circuit Judges.

LEWIS, Chief Judge.

Plaintiff school board brought this action in United States District Court for the District of New Mexico challenging one subsection of the New Mexico Public School Finance Act [1] on the ground it conflicts with the Atomic

[1] N.M. Stat. Ann. § 77-6-19(F) (1953). Since entry of judgment by the district court the New Mexico Public School Finance Act has been amended and the challenged subsection is now codified as N.M. Stat. Ann. § 77-6-19(G) (Supp. 1975). The challenged subsection will be referred to as subsection 19(G) in this opinion.

Energy Community Act of 1955 ("AECA"), 42 U.S.C. §§ 2301-94, and is therefore unconstitutional under the supremacy clause, U.S. Const. art. VI, cl. 2. The defendants are the responsible New Mexico education officials. The district court entered judgment for plaintiff declaring subsection 19(G) unconstitutional and ordering defendants to fund the school district under the general funding formula applicable to all other school districts.

Los Alamos, New Mexico, was originally established by the federal government as one of three federally-owned communities to house employees and their families who were involved in atomic energy research. In 1955 Congress approved legislation, the AECA, providing for the gradual termination of government ownership and management of two of these communities, Oak Ridge, Tennessee, and Richland, Washington. Los Alamos was included in this legislation in 1962.

The federal government transferred without cost the public schools it had built to the newly-created Los Alamos School District. The federal government originally through the Atomic Energy Commission and now through the Energy Research and Development Administration (ERDA), however, continued to make assistance payments to the school district pursuant to 42 U.S.C. §§ 2391-94. These payments to the school district have averaged more than two million dollars annually. In 1974 the school district received more than $2.4 million from the federal government in AECA funds.

Prior to 1974 New Mexico gave money to local school districts including Los Alamos to assist them in financing public education. Under this plan Los Alamos received about $2.3 million from the state for the 1973-74 school year. In 1974 the Public School Finance Act was amended in an attempt to equalize educational expenditures and opportunities state-wide. This general "equalization funding formula" is now codified in N.M. Stat. Ann §§ 77-6-



19(A)-(F) (Supp. 1975).[2] This general formula applies to every school district in the state except Los Alamos. Los Alamos receives state funds for education under subsec-

---

[2] These subsections provide:

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue" as used in this section means ninety-five per cent [95%] of receipts to the school district derived from the following:

(1) That amount produced by a school district property tax at the rate of eight dollars ninety-two and one-half cents ($8.925) per one thousand dollars ($1,000) of net taxable value of property allocated to the school district; and

(2) the school district's share of motor vehicle fees distributed in accordance with section 77-6-35 NMSA 1953.

C. "Federal revenue" as used in this section means ninety-five per cent [95%] of receipts to the school district derived from the following:

(1) the school district's share of forest reserve funds distributed in accordance with section 77-6-35 NMSA 1953;

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with sections 236 through 240 of Title 20 of the United State Code (commonly known as "PL 874 funds") or an amount equal to the revenue the district was entitled to receive if no application were made for such funds; and

(3) grants from the federal government to public secondary schools authorized by the United States Vocational Education Act of 1963, as amended (20 U.S.C. 1241-1391).

D. To determine the amount of the state equalization guarantee distribution the chief shall:

(1) calculate the number of program units to which each school district is entitled using membership and other required reports for the first forty [40] days of the school year and for the first eighty [80] days of the school year;

(2) using the higher number of the result of the calculation in paragraph (1) of this subsection, establish and total program cost of the school district; and

(3) calculate the local and federal revenues as defined in this

tion 19(G) expressly because it receives education funds from ERDA under the AECA.[3]

---

section; and

(4) deduct the sum of the calculations made in paragraph (3) of this subsection from the program cost established in paragraph (2) of this subsection.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deduction made in paragraph (4) of subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee is being computed. In the event that a district has received more state equalization guarantee funds that its entitlement, a refund shall be made by the district to the state general fund.

[3] Subsection 19(G) provides:

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in section 77-6-19 NMSA 1953 and Laws 1974, chapter 8, section 22, if a school district receives funds, under section 2391 of Title 42 U.S.C.A., and if the federal government takes into consideration grants authorized by sections 236 through 240 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district, the amount of the state equalization guarantee distribution for the sixty-third fiscal year shall be the same as the amount of state revenues except for transportation and textbook revenues provided in the sixty-second fiscal year multiplied by the save harmless percentage of subsection F of Laws 1974, chapter 8, section 22, and further multiplied by the ratio of the full-time equivalent ADM for the sixty-third fiscal year to the full-time equivalent ADM for the sixty-second fiscal year. For the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

$$\frac{\text{fiscal year program cost for the year for which the state equalization guarantee distribution is being computed}}{\text{prior fiscal year program cost}} \times \text{prior fiscal year state equalization guarantee distribution} = \text{fiscal year state equalization guarantee distribution for the year which the state equalization guarantee distribution is being computed.}$$



In exhibits presented to the district court, it was estimated the Los Alamos School District would receive more than $2.3 million from the state for the 1974-75 school year under subsection 19(G). Under the general funding formula applicable to all other school districts Los Alamos would have been entitled to approximately $2.8 million during the same period. It was also projected that Los Alamos would receive more than $2.5 million in state funding for 1975-76 under subsection 19(G), which is $475,000 less than it would receive if the general funding formula applied to Los Alamos.

The general funding formula determines the level of state funding by calculating each school district's basic program cost and subtracting 95 percent of the school district's local and certain specified federal revenues. Subsection 19(G) provides Los Alamos would receive an increase in state funding to match increased enrollment for the 1974-75 school year and additional increases in subsequent years to match both increases in enrollment and program costs.

The statutory scheme provides that if Los Alamos received no AECA funds for education in a given year then it would come within the general funding formula. Thus Los Alamos is singled out for special treatment merely because it receives AECA funds.

Los Alamos is unquestionably the wealthiest school district in the state. Among school districts of comparable size Los Alamos was ranked first in the state in operational revenue per pupil, in expenditures per pupil, in average teacher salary, in lowest pupil/teacher ratio, in lowest pupil/adult ratio, and in summer school and after school expenditures per pupil. Los Alamos has developed

this superior and expensive educational program through the infusion of millions of dollars in AECA funds.[4]

Since Los Alamos does not contend New Mexico has denied it equal protection by singling it out for special treatment, it is unnecessary to mention the reasons and justifications New Mexico advances for the special treatment. Instead, Los Alamos argues subsection 19(G) is unconstitutional under the supremacy clause because it conflicts with the AECA. The district court entered a judgment for plaintiff declaring subsection 19(G) unconstitutional and ordering defendants to give state educational funds to the Los Alamos School District under the general funding formula applicable to all other school districts. Defendants appeal this judgment. The only issue confronting us is whether Congress in adopting the AECA intended to prohibit New Mexico from funding Los Alamos in a different manner from other school districts solely because it receives educational funds under the AECA.

The supremacy clause provides the " . . . Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . ." U.S.Const. art. VI, cl. 2. It establishes as a principle of our federalism that state and local laws are not enforceable if they impinge upon an exclusive federal domain. This impermissible impingement is diversely described as "preemption" and "conflict." The applica-

[4] Under New Mexico's general funding formula, factors such as the experience and education level of the school district's faculty and the costs and types of educational programs offered by the school district are considered in determining the level of state funding. As a result of the infusion of federal funds, plaintiff school district has developed a highly qualified faculty and high quality education programs, thus qualifying it for a high level of state funding under the gederal formula. If plaintiff received state funds under the general formula, it would receive a disproportionately high level of state funds, vis-a-vis other New Mexico school districts, as a direct result of the prior infusion of federal funds.



tion of those terms means the state or local government has attempted to exercise power which it does not possess because of an express or implied denial of that authority in the Constitution or valid federal laws and regulations promulgated thereunder. *See Northern States Power Co. v. Minnesota,* 8 Cir., 447 F.2d 1143, 1146, aff'd, 405 U.S. 1035, 92 S.Ct. 1307, 31 L.Ed.2d 576. *Compare Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 83 S.Ct. 1210, 10 L.Ed.2d 248, and *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1347, with *Perez v. Campbell,* 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233.

Plaintiff contends subsection 19(G) conflicts with the AECA. In order to reach our determination of this issue, we review the leading cases of *Hines v. Davidowitz,* 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581, and *Perez v. Campbell, supra.* In *Hines,* the Supreme Court was confronted with an alleged conflict between the Pennsylvania Alien Registration Act of 1939 and the Federal Alien Registration Act of 1940. The Court ultimately held the federal act formed a comprehensive integrated scheme for the regulation of aliens and precluded the enforcement of state alien registration acts such as that adopted by Pennsylvania. In so holding, the Court had to make a determination of "whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." 312 U.S. at 67, 61 S.Ct. at 404.

This language is instructive in two respects. First, the Court uses the language "in this particular case" indicating these matters must be decided on a case by case basis. The Court makes this clearer by saying "[t]here is not . . . any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress." *Id.* at 67, 61 S.Ct. at 404. Second, it indicates there must be an inquiry into congressional purpose and objective and a comparison with the state

law purpose and objective. In making such a comparison in *Hines,* the Court says "where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation . . . states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law or enforce additional or auxiliary regulations." *Id.* at 66-67, 61 S.Ct. at 404.

At first blush, this is strong, confining language. "[I]nconsistently with the purpose of Congress," however, seems to be somewhat of a qualifying phrase indicating that in some cases where the state and federal purposes are not necessarily inconsistent, certain conflicts between state and federal law will not necessarily render the state law invalid. It should be noted *Hines* offers no absolute test. The Court points out there is no "fallible constitutional test or an exclusive constitutional yardstick." *Id.* at 67, 61 S.Ct. at 404.

*Perez* interpreted *Hines* as establishing a "controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." 402 U.S. at 652, 91 S.Ct. at 1712. In *Perez* the Court held Arizona's Motor Vehicle Safety Responsibility Act conflicted with section 17 of the Bankruptcy Act, 11 U.S.C. § 35, which says a discharge in bankruptcy discharges all but certain specified judgments. The state statute called for the suspension of the license of a driver who was involved in an automobile accident and failed to post sufficient security with respect to potential liability. This suspension was to continue until any judgment debt incurred as a result of the accident was paid and proof of financial responsibility was given. The state law expressly said that release from the judgment debt through federal bankruptcy proceedings would not terminate the license suspension. In determining there was a conflict, the Court said:



> As early as *Gibbons v. Ogden,* 9 Wheat. 1, [6 L.Ed. 23] (1824), Chief Justice Marshall stated the governing principle—that "acts of the State Legislatures . . . [which] *interfere with,* or are contrary to the laws of Congress, made in pursuance of the constitution," are invalid under the Supremacy Clause. *Id.,* at 211 (emphasis added). Three decades ago Mr. Justice Black, after reviewing the precedents, wrote in a similar vein that, while "[t]his Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, ha[d] made use of the following expressions: conflicting; contrary to; difference; irreconcilability; inconsistency; violation; curtailment; and interference[,] . . . [i]n the final analysis," *our function is to determine whether a challenged state statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz,* 312 U.S. 52, 67, [61 S.Ct. 399, 404, 85 L.Ed. 581] (1941).
>
> 402 U.S. at 649, 91 S.Ct. at 1711 (emphasis added).

In carrying out our function of deciding whether subsection 19(G) is in conflict with the AECA, we must go through a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. *Perez, supra* at 644, 91 S.Ct. 1704. Turning first to the state statute, since the New Mexico Public School Finance Act has not been authoritatively construed by the New Mexico Supreme Court we will rely heavily on the construction of the district court. The district court described the Public School Finance Act generally as "an equalization formula designed to eliminate adverse educational effects caused by disparities in financial resources available to individual school districts." The general funding formula

considers the qualifications and experience of the teachers in each school district in determining the program costs of each school district. In explaining the rationale for treating Los Alamos differently under subsection 19(G), the district court said "[AECA] funds used to retain highly qualified and experienced teachers gives the [Los Alamos] school district a higher teacher training and experience factor, thereby increasing the state's equalization guarantee" to Los Alamos if the Los Alamos School District received state aid under the general funding formula. Thus, instead of taking credit for AECA funds, New Mexico gives Los Alamos school aid under an entirely different formula. It is also clear as the district court pointed out, "[i]f AEC aid was discontinued, Los Alamos would come under the general formula." In summation, the effect of the challenged subsection 19(G) is to give plaintiff approximately $500,000 less in state aid than it would receive in each of the first two fiscal years. Furthermore, in subsequent years under subsection 19(G), state aid to Los Alamos will increase proportionately as its enrollment and program costs rise.

Turning to the federal statute, the construction of the AECA is less clear. There is no express statement in either the statutory language or the legislative history what Congress intended with regard to state aid to school districts receiving AECA funds. See generally the legislative history of the AECA at 1955 U.S. Code Cong. & Admin.News, pp. 2620-45. The broad, general purposes of the AECA are more easily discernible. Congress declared that its policy is to terminate the government ownership and management of the atomic energy communities in an expeditious manner that would not impede the atomic energy program. This is to be accomplished by the AEC and now ERDA assisting in the formation of local self-governing units to which municipal installations, including schools, would be transferred. 42 U.S.C. § 2301.



Because the morale of project-connected persons is essential to the common defense and security of the United States, Congress found the federal government could not totally divorce itself from the new civilian communities. Therefore, it authorized funds for assistance in operating the communities. 42 U.S.C. §2302. The declared purposes of Congress in enacting the AECA are contained in 42 U.S. § 2303.

> It is the purpose of this chapter to effectuate the policies set forth above by providing for—
>
> (a) the maintenance of conditions which will not impede the recruitment and retention of personnel essential to the atomic energy program;
>
> (b) the obligation of the United States to contribute to the support of municipal functions in a manner commensurate with—
>
> (1) the fiscal problems peculiar to the communities by reason of their construction as national defense installations, and
>
> (2) the municipal and other burdens imposed on the governmental or other entities at the communities by the United States in its operations at or near the communities;
>
> (c) the opportunity for the residents of the communities to assume the obligations and privileges of local self-government; and
>
> (d) the encouragement of the construction of new homes at the communities.

The germane purpose for the instant case is "the maintenance of conditions which will not impede the recruitment and retention of personnel essential to the atomic energy program." *See* 1955 U.S. Code Cong. & Admin. News at 2635.

We proceed now to the constitutional question whether subsection 19(G) is in conflict with the AECA. The exercise of federal supremacy is not lightly to be presumed. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intent to do so. *Merrill Lynch, Pierce, Fenner & Smith v. Ware,* 414 U.S. 117, 94 S.Ct. 383, 38 L.Ed.2d 348; *New York Dept. of Social Services v. Dublino,* 413 U.S. 405, 93 S.Ct. 2507, 37 L.Ed.2d 688; *Goldstein v. California,* 412 U.S. 546,, 93 S.Ct. 2303, 37 L.Ed.2d 163. These recent decisions of the Supreme Court suggest that where the conflict is only a potential one or peripheral to the purpose of the federal statute, state legislation will be allowed to stand. As was made clear in our earlier discussion of *Hines* and *Perez,* federal supremacy issues must be decided on a case by case basis and certain conflicts between state and federal law will not necessarily render the state law invalid.

In deciding the constitutional question, if the plain and inevitable effect of the state statute is to impair the operation of the federal statute, the state statute may not stand. *Perez, supra* 402 U.S. at 652, 91 S.Ct. 1704. Plaintiff argues and we agree that the primary reason AECA funds are given to plaintiff is to provide Los Alamos with a high quality school system "which will not impede the recruitment and retention of personnel essential to the atomic energy program." The effect of the challenged subsection is to provide plaintiff with less school aid solely because it receives AECA funds.

We are confronted with the problem whether the failure of the state to give funds to plaintiff under the same formula used for other districts stands as an obstacle to Congress' attempt not to impede the recruitment and retention of necessary personnel. Had Congress focused on the problem presented herein, the supremacy issue might well be different. However, the parties have not cited any



indication that Congress addressed or resolved this question. *Compare Perez, supra* at 655, 91 S.Ct. 1704. Thus, this court must dispose of the matter without the assistance of legislative consideration.

We conclude subsection 19(G) does not "frustrate the full effectiveness" of the AECA. In reaching our conclusion we are guided by several considerations: We are reluctant to strike down state legislation in the fact of complete congressional silence; plaintiff made no attempt to show that New Mexico's level of funding has impeded or would impede the recruitment or retention of necessary personnel; subsection 19(G) provides for increases in state aid as plaintiff's enrollment and program costs increase; the New Mexico statutory scheme does not impair Congress' policy of completely removing itself from the managing and funding of atomic energy communities since plaintiff would be eligible for increased state aid if AECA funds were terminated; and in *San Antonio School Dist. v. Rodriguez,* 411 U.S. 1, 42, 93 S.Ct. 1278, 36 L.Ed. 2d 16, the Supreme Court emphasized that state school finance laws "should be entitled to respect." Since we have been directed to no congressional manifestation of intent to limit the manner in which states give educational aid to atomic energy communities, we conclude subsection 19 (G) does not offend the supremacy clause.

In striking down subsection 19(G) the district court relied primarily on five so-called Impact Aid Act cases. *Carlsbad Union School Dist. v. Rafferty,* S.D.Cal., 300 F.Supp. 434, *aff'd,* 9 Cir., 429 F.2d 337, *Triplett v. Tiemann,* D.Neb., 302 F.Supp. 1244; *Hergenreter v. Hayden,* D.Kan., 295 F.Supp. 251; *Douglas Independent School Dist. v. Jorgenson,* D.S.D., 293 F.Supp. 849; *Shepheard v. Godwin,* E.D.Va., 280 F.Supp. 869. These five cases held that state laws which provide for the deduction of certain percentages of federal impact funds, 20 U.S.C. § 236 *et seq.,* from the amount of state aid which would otherwise

have been allocated by the state to impacted school districts were violative of the supremacy clause. These Impact Aid Act cases are readily distinguished from the instant case. In these cases the Congress had expressly manifested its intent in H.R.Rep.No. 1814, 88th Cong. (1966):

> Fifteen States offset the amount of [Impact Aid Act] funds received by their school districts by reducing part of their State aid to those districts. This is in direct contravention to congressional intent.

1966 U.S. Code Cong. & Admin.News, p. 3878. All five cases relied on this expression of congressional intent to hold the state laws violated the supremacy clause. We are here guided by no similar manifestation of congressional intent. In the absence of any evidence that Congress intended to limit the manner in which states fund school districts in atomic energy communities, and the further lack of evidence that the avowed intent of Congress to create far *superior* schools has been frustrated or will be frustrated, we hold that subsection 19(G) does not unconstitutionally conflict with the AECA. To hold otherwise, that federal aid was intended as a supplement to state funds, begs the question. In fact, when the federal plan to finance Los Alamos was originated there was nothing to supplement.

REVERSED.

WILLIAM E. DOYLE, Circuit Judge, dissenting.

I respectfully dissent.

The basis for my disagreement arises from the fact that the effect of the state statute is to frustrate the effort of Congress to create a superior school system in Los Alamos. The majority opinion states that there is not an expression in either the federal statutory language or the legislative history as to the specific intent of Congress



with respect to state aid to school districts receiving AECA funds. The opinion does concede that there are broad general purposes in the AECA which are apparent. The majority does not apply these general legislative purposes to schools. Congress has, however, expressed an intent to maintain a high level of services in order to attract and retain personnel of high caliber who can contribute to the common defense and security of the United States. Such a purpose is expressed at 42 U.S.C. Section 2302, which provides:

> The Congress of the United States makes the following findings concerning the communities owned by the Atomic Energy Commission:
>
> (a) The continued morale of project-connected persons is essential to the common defense and security of the United States.

Senate Report No. 1140, at 1955 U.S. Code Cong. & Admin.News, pp. 2620-45, notes that there were at that time high quality schools in the AEC towns and it requires the AEC to keep them at their high level by continuing aid for the purpose of attracting high caliber personnel. The report generally recognizes the necessity for maintaining high quality schools.

The clear *effect* of withdrawal of state support to these schools will be a very substantial diminution in funding. It will require the United States to reexamine the sufficiency of its contribution. Undoubtedly it will have to supplement to the extent that the state has withdrawn funds. In my judgment this is a direct frustration of the Congressional intent. The majority opinion cannot fail to recognize that the controlling principle to be applied is that where state legislation frustrates the full effectiveness of the federal law, it is invalid under the Supremacy Clause of the United States Constitution. *See Perez v.*

*Campbell*, 402 U.S. 637, 652, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971).

The reasoning of the majority is that since the Congressional Act did not specifically anticipate the present turn of events, New Mexico is free to take the action which it took. The fault in the reasoning is that the majority has not given due weight to the general findings of Congress that the morale of the persons connected with the project was to be maintained in the interest of the common defense and security of the United States. Furthermore, the maintenance of high quality schools was considered essential to high morale. Accordingly, the presence of the federal interest herein cannot be denied, and this factor weighs heavily in determining the validity or invalidity of the state statute. *See Hines v. Davidowitz*, 312 U.S. 52, 67-8, 61 S.Ct. 399, 85 L.Ed. 581 (1941). The Supreme Court in *Hines* recognized that the federal interest in legislation having to do with the registration of aliens derived from the government's interest in international relations. In that respect it said that "[a]ny concurrent state power that may exist is restricted to the narrowest of limits". *Id.* at 68, 61 S.Ct. at 404. The Pennsylvania Alien Registration Act was held to be in conflict with federal enactments.

It is true that New Mexico has not attempted to regulate directly in this area of federal interest. However, by going in through the back door, so to speak, in an effort to save state funds and to increase the burden of the federal government, it has created a greater interference than could have been possible through direct means. When, as here, the federal government has created a school system, has presented it to the state of New Mexico, has provided funding for this school system in the interest of attracting the best possible personnel and then the state reduces its annual support of this school system from approxi-



mately 2.8 million dollars to 2.3 million dollars, it is acting contrary to the federal government's effort to maintain the high standards which it has established. This is contrary to the intent of the legislation which granted the funds. This interference with federal activity and this frustration of federal purpose, if it passes judicial scrutiny, will be extended in future years and if the majority's analysis is valid, there is nothing to prevent New Mexico from withdrawing all aid from this school system. Furthermore, it could spread to other areas. The final result could be that the federal government would withdraw all financial aid from these communities and schools or that it could, of course, adopt other more specific legislation. This, however, should not be required, for this would lead to more litigation, delay, uncertainty, and perhaps further competitive manipulation.

It is for these reasons that I believe that the majority decision should not stand.

## APPENDIX B

### Order Denying Rehearing

Before The Honorable David T. Lewis, Chief Judge,
The Honorable Oliver Seth, Circuit Judge,
The Honorable William J. Holloway, Jr., Circuit Judge,
The Honorable Robert H. McWilliams, Circuit Judge,
The Honorable James E. Barrett, Circuit Judge, and
The Honorable William E. Doyle, Circuit Judge

(Caption Omitted in Printing)

This matter comes on for consideration of appellee's petition for rehearing and suggestion for rehearing en banc, together with appellant's response to the petition.

Upon consideration whereof, the petition for rehearing is denied by Chief Judge Lewis and Circuit Judge Barrett, to whom the case was argued and submitted. Circuit Judge Doyle, also on the hearing panel, and who dissented in the opinion filed May 31, 1977, voted to grant rehearing.

The Court having been polled on the suggestion for rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, rehearing en banc is denied by Chief Judge Lewis, Circuit Judges Seth, McWilliams and Barrett. Circuit Judges Holloway and Doyle voted to grant rehearing en banc.

/s/ Howard K. Phillips
Howard K. Phillips
*Clerk*



## APPENDIX C

### District Court Opinions

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. 74-175 Civil

Los Alamos School Board, *Plaintiff*,

vs.

Harry Wugalter, et al, *Defendants*.

(Filed October 7, 1975)

### Opinion of Judge Mechem

Los Alamos, New Mexico, was selected as a site for atomic energy research because its geographical isolation was favorable to maintaining the stringent security necessary in the early stages of wartime weapons research. These conditions dictated that a town be build to house employees and their families. The town had to be attractive to scientists and skilled technicians whose abilities were vital to the defense effort.

When the Atomic Energy Commission, now ERDA, inherited the communities of Los Alamos, New Mexico, Richland, Washington and Oak Ridge, Tennessee, from the Manhattan Engineer District in 1947, the AEC found itself in the undesirable position of owning and governing the residential communities. The Commission found this to be a burdensome distraction from its primary objectives. Residents of these communities could not build nor own their own homes and could not govern themselves as other United States citizens. In 1952, the Commission's experience with new installations indicated that federal ownership and control of communities serving the defense

installations was unnecessary and undesirable, and that residential property and community facilities should be disposed of. An advisory panel reported in 1951:

> "The communities and the housing and the other facilities which they embrace bear an important relation to the AEC program. Their effect on the recruitment and maintenance of personnel both in terms of numbers of workers and in the grade and morale of workers is sufficient to make the presence, attractiveness and efficiency of the towns a continuing concern of the Commission."

The report described the level of municipal services of the communities as necessities to the AEC's program, particularly schools and hospitals. See generally the legislative history of the Act at 2, 1955 U.S. Code Cong. & Adm. News, 2620.

Residential property was to be sold outright, but the Commission recognized that requiring the communities to pay for federally owned municipal installations would saddle the new city governments with an almost insurmountable debt, the cost of which would only increase the proposed assistance payments that would be made to the cities by the Commission. Thus, it was decided that municipal installations, schools included, would be transferred without cost to the appropriate legal entities in the new community. If the Commission was to be given power to impose a level of services on the schools and other entities, it would be required to make assistance payments to cover the burden it was imposing on the communities.

The Atomic Energy Communities Act, 42 U.S.C. 2301, et seq, accompanied the Atomic Energy Act of 1954. Congress adopted some of the findings of the Committee Report in the first three sections of the Act. Congress declared that its policy was that government ownership and



management of the communities would be terminated in an expeditious manner, but which would not impede the Atomic Energy program. This was to be accomplished by the Commission's assisting in the formation of local self-governing units to which municipal installations, including schools, would be transferred. 42 U.S.C. 2301.

Congress found, however, that the Commission could not totally divorce itself from the new civilian communities because the morale of project-connected persons was essential to the common defense and security of the United States. It, therefore, authorized funds for assistance in operating the communities. 42 U.S.C. 2302.

It was the declared purpose of Congress to provide for: a) maintenance of conditions which will not impede recruitment and retention of personnel essential to the Atomic Energy program; b) the obligation of the United States to contribute to the support of municipal functions in a manner commensurate with:

(1) the fiscal problems peculiar to the communities by reason of their construction as national defense installations, and

(2) the municipal and other burdens imposed on the governmental and other entities at the communities by the United States in its operations at or near the communities.

Los Alamos was included in this legislation in the 1962 Amendment.

The New Mexico Public School Finance Act is an equalization formula designed to eliminate adverse educational effects caused by disparities in financial resources available to individual school districts. Only the basic features of the formula are described here.

The first half of the formula computes the amount of funds needed to finance a school district's basic program. The first step is to determine the district's average daily membership in each grade. This figure is multiplied by the cost of the basic program in a given grade and the cost of the basic program in grades four through six. The product of the above computation is the number of program units required in each grade. When added together, the sum is the total program units required by the District.

The total program units required are further multiplied by a factor called the teacher training and experience index which is designed to recognize increased costs of retaining trained and experienced teachers without penalizing those districts whose teachers fall below the 1.0 value in the table. The maximum value in the table is 1.5. This product is also referred to as total program units.

The total program units are multiplied by the assigned dollar cost per program unit to translate program units into one hundred percent of the district's basic program cost in dollars.

The second step is to determine the local revenues available or which would be available to the school district. These are credited against program unit cost. The statute, 77-6-19B, specifies that 95% of local revenue is credited against the school district. The state also takes credit for 95% of federal revenue, which includes Impact Aid Funds or PL 874 funds. 20 U.S.C. 236-240. The balance remaining after the deduction allowed by subsection (B) and (C) is the state equalization guarantee distribution.

The state does not directly take credit for AEC funds in the same manner as it takes credit for PL 874 funds. School districts receiving AEC funds (Los Alamos is the only district) are to be funded under subsection (F):



F. Notwithstanding the methods of calculating the state equalization guarantee distribution in sections 16 and 22 of this act [this section and 77-6-2(2), note], if a school district receives funds, under section 2391 of Title 42 U.S.C.A., and if the federal government takes into consideration grants authorized by sections 236 through 240 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district, the amount of the state equalization guarantee distribution for the sixty-third fiscal year shall be the same as the amount of state revenues except for transportation and textbook revenues provided in the sixty-second fiscal year multiplied by the save harmless percentage of subsection F of section 22 of this act [77-6-2(2), note], and further multiplied by the ratio of the full-time equivalent ADM for the sixty-third year to the full-time equivalent ADM for the sixty-second fiscal year. For the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

$$\frac{\text{fiscal year program cost for the year for which the state equalization guarantee distribution is being computed}}{\text{prior fiscal year program cost}} \times \text{prior fiscal year state equalization guarantee distribution} = \cdot$$

fiscal year state equalization guarantee distribution for the year for which the state equalization guarantee distribution is being computed.

The above section removes Los Alamos from the general formula because it receives federal funds from the AEC. It provides that Los Alamos shall receive exactly what it received last year, except as modified by changes in aver-

age daily membership. Funding for subsequent years is computed as a ratio of the previous year's funding. A save harmless clause protects the school district from decreases in funding in the next few years.

Los Alamos will receive $245,000 less state aid this year under subsection F than it would receive under the general formula.

The Los Alamos schools were transferred from the AEC to the School District in 1966. The School District has received annually about two million dollars in assistance payments pursuant to 42 U.S.C. 2391-2394. The Commission must make assistance payments for the first ten years after transfer of the installation. The amount of the payments is a matter of defined discretion. The determination of what is a just and reasonable sum is guided by the factors in § 2391(a)(1-5). Subsection (e) requires the Commission to assure itself that the entity receiving assistance is using all available means to become financially self-sufficient so that payments may be reduced or terminated.

Section 2391 is normally implemented by contracts between the entity and the AEC. The contract provides that the Commission will take into account the efforts of the Board in seeking and making full use of funds from all available sources. This lawsuit was filed to fulfill that obligation.

The School District's budget is determined according to the "Guideline School Method of Comparison". The budgets of selected school districts serving communities comparable to Los Alamos and attaining educational standards consistent with the objectives of the Communities Act are used as the basis for establishing the budget for the Los Alamos School District. AEC aid is designed to allow the School District to equal the Guideline School's budget if its own funds are insufficient.



The AEC has taken no action to vary its assistance payments in fiscal year 1975. It does not plan to request an additional $245,000 to cover the lost state funds. Los Alamos would receive nearly $500,000 more in state aid if it were funded under the general formula. If AEC aid was discontinued, Los Alamos would come under the general formula.

The Los Alamos School District is ranked either first or among the top few school districts in New Mexico in pupil-teacher ratio, teacher salary and experience, and expenditures per pupil. No one questions that this is due primarily to the infusion of federal funds into the school district. One inharmonious aspect of the two funding schemes is that federal funds used to retain highly qualified and experienced teachers gives the school district a higher teacher training and experience factor, thereby increasing the state's equalization guarantee. This effect doesn't appear in other applications of the formula.

There are no reported cases under the Atomic Energy Communities Act. This action originally challenged the state's treatment of PL 874 funds. That challenge became moot when Congress enacted PL 93-380. The reasoning in the cases arising under PL 874 is applicable to this controversy under the Atomic Energy Communities Act. See generally *Shepard* v. *Goodwin*, 280 F.Supp. 869 (1968); *Hergenreter* v. *Hayden*, 295 F.Supp. 251 (1968).

In *Shepard* the State of Virginia took credit for PL 874 funds received by the school district and was thereby able to reduce state aid to the district. The State's theory was that PL 874 funds were a substitute for local tax revenue for which the State could take credit. The three-judge panel rejected this argument by deciding that the funds were intended to supplement local revenues and not as a substitute for state aid. The Court held the aim of the federal statute was thwarted by the state's taking credit for federal funds.

In *Hergenreter* v. *Hayden* a three-judge panel of this circuit followed the *Shepard* decision. The Kansas statute attacked in that action was also an equalization formula. There, as here, the state argued that the loss of land from the tax rolls tended to increase the state equalization funds while at the same time the federal government was also compensating the district for the same loss.

The panel found that the state was tampering with the distribution of federal funds in violation of the Supremacy Clause. The state's purpose may have been reasonable, laudable and salutary, but the vice of the statute was its attempt to substitute state judgment for federal judgment. See also *Douglas Independent School District No. 3* v. *Jorgenson,* 293 F.Supp. 849 (1968); *Triplett* v. *Tiemann,* 302 F.Supp. 1244 (D.C.Neb. 1969); *Carlsbad Union School District of San Diego County* v. *Rafferty,* 300 F.Supp. 434 (S.D.Cal. 1969) aff'd 429 F.2d 337 (1970); *State ex rel Sego* v. *Kirkpatrick,* 86 NM 359, 368-371, 524 P.2d 975 (1974).

Congress ratified the reasoning of the *Shepard* panel by enacting 20 U.S.C. 240(d)(2) which prohibited payments to school districts in states taking credit for the federal Impact funds. This section was recently amended to allow the Secretary of Health, Education and Welfare to grant exceptions to states having qualifying equalization plans.

The Atomic Energy Communities Act has a limited application and has not been the subject of extensive debate as the Impact Aid Laws.

The issue, however, is exactly the same. Los Alamos is treated differently because it receives AEC funds. If the state is attempting to manipulate federal funds which Congress intended to supplement funds received by the District, the state statute cannot stand.

I think that Congress clearly intended AEC Assistance payments as a supplement rather than a substitute for local and state funding. Subsection (e) of § 2391 indicates



that Congress intended that entities receiving assistance would eventually become self-sufficient, but it recognized the fact that the transition had to be gradual and supported by the AEC to achieve AEC goals. Section 2391 (c) expresses Congress' intent that the payments are for special burdens. The Commission found it necessary to continue funding Richland and Oak Ridge beyond the ten years.

The funding formula effectively freezes Los Alamos into the position it was in last year. Los Alamos can be funded in the same manner as other districts only when it no longer receives AEC funds.

The defendants claim that the Atomic Energy Communities Act is unconstitutional and is, therefore, not entitled to the protection of the Supremacy Clause. *McCulloch* v. *Maryland,* 4 Wheat 316, 436, 4 L.Ed. 579 (1819). The defendants advanced three theories of unconstitutionality, all of which are designed to convert this action into something which it is not. The first theory is that the Atomic Energy Communities Act uses an irrational means to accomplish the intent of Congress and, therefore, violates the due process clause of the Fifth Amendment. Defendants contend that as long as New Mexico does fund the Los Alamos School District, it need not treat Los Alamos in the same manner as other "poor" school districts. This is merely another way of saying that the state may interfere with the use of federal funds.

The second theory is that New Mexico citizens are denied equal protection because federal aid to a specific school district has an anti-equalizing effect. This is simply another way of saying that the federal government is prevented from providing supplemental funds directly to a school district because of state law.

Th third affirmative defense is based on the Tenth Amendment. Defendants argue that the federal Act attempts to control the way in which the state funds its schools, a power

reserved for the several states under the Constitution. This argument is without merit.

A federal statute violates the due process clause of the Fifth Amendment with its implied equal protection standards only if there is a patently arbitrary classification utterly lacking in rational justification. *School Board of Okaloosa County* v. *Richardson*, 332 F.Supp. 1263 (1971). The Atomic Energy Communities Act is a reasonable way to terminate the federal government's management of the private communities it built. Congress has recognized that the development of atomic energy is a matter of national importance and that assistance to these communities provides for the common defense and promotes the general welfare. Direct financial aid is a permissible way of accomplishing these objectives.

The states' attempts to equalize educational opportunities for all public school children is commendable, but cannot be accomplished at the expense of federal programs of national importance. If the state wishes to avoid the conflict between its program and those validly enacted by the federal government, it must seek relief in Congress and not here. Section 77-6-19F violates the Supremacy Clause and is, therefore, unconstitutional.

/s/ E. L. Mechem
United States District Judge



(Caption Omitted in Printing)

(Filed November 14, 1975)

**Memorandum Opinion**

This is an action for a declaratory judgment. On October 7, 1975, a memorandum opinion was entered declaring NMSA 77-6-19(G) (1975 Interim Supp.) unconstitutional by reason of its conflict with federal law. No judgment was entered because of controversies over the form of permissible relief.

The defendants contend that there have been distributions already to school districts for the 1975-6 school year and that any injunction which would serve to augment prior distributions is barred by the 11th Amendment. *Edelman* v. *Jordan* 415 US 651. The defendants further argue that an injunction prospectively directing defendants to administer the statute in a constitutional manner violates *Edelman* because the state legislature has already budgeted and appropriated funds for this fiscal year. They conclude therefore that no injunctive relief can commence prior to July 1, 1976.

The plaintiff's position is that an injunction may issue which is effective for the entire year.

School districts in New Mexico submit proposed budgets to defendants. These are approved by the defendants and used as the basis of defendants' request for appropriations by the legislature. The legislature considers the requests and its appropriation is included in the general appropriations act. The money appropriated to the state equalization guarantee fund is distributed by defendants.

Each district's equalization guarantee distribution is determined by the statutory formula. This is outlined on p. 3 [pp. 21a, 22a herein] of the previous opinion but requires further explanation here. The starting point is to deter-

mine the school district's average daily membership (ADM). School districts report the ADM to the defendants after the first 40 and first 80 days of the school year NMSA 77-6-14.

The 40 and 80-days ADM reports are used to determine the program units to which a district is entitled. These are separate calculations and only the higher figure is used. NMSA 77-6-19. The district's entitlement cannot be definitely determined until the calculation based on the 80-day ADM reports is made. The calculations will not occur prior to entry of judgment.

The legislature provided a reserve fund to guarantee that school districts will receive the amount called for by the formula if distributions exceeded the amount appropriated for the fiscal year NMSA 77-6-30. Legislative authority to use the reserve fund is not required. It simply reimburses the fund by appropriations the next year to maintain a specified balance.

The defendants, however, do make and have made monthly distributions to school districts prior to receiving the ADM report. These distributions are calculated on the basis of the school districts' approved budgets which served as the basis for the original appropriation. These payments are in the nature of advances to enable the school district to operate normally until the statutory calculations are made.

The calculation of the distribution for the Los Alamos School District is determined by comparing the ADM for this fiscal year with last fiscal year's ADM. The 40 and 80-day ADM reports are not used in the computations in this subsection which was declared unconstitutional. (See p. 4 of the Opinion).

On the basis of the Statute the distribution for Los Alamos is not determinable until the end of the school year. It does, however, receive funds monthly on the basis of its approved budget.



The issue here is whether a prospective injunction entered this date violates *Edelman* v. *Jordan* by having a retroactive impact on the public treasury of the State of New Mexico. *Edelman* holds that the Eleventh Amendment bars ordering payment of monies withheld from plaintiff resulting from a past breach of legal duty by defendant State Officials.

The decision recognized that prospective injunctive relief had an impact on state treasuries,

> But the fiscal consequences to state treasuries in these cases were the necessary result of compliance with decrees which by their terms were prospective in nature. State Officials, in order to shape their official conduct to the mandate of the Court's desires, would more than likely have to spend money from the state treasury than if they had been left free to pursue their previous course of conduct. Such an ancillary effect on the state treasury is a permissible and often inevitable consequence of the principle announced in *Ex parte Young, supra.* 415 U.S. 651, 667-8.

The defendants have not yet made final computations according to the statutes they administer. The determinations have not been made under either subsections D-F covering all school districts except Los Alamos and subsection G covering only Los Alamos. There has been no administration of the statute in this fiscal year breaching a legal duty owed to plaintiff. The preparations of a budget and a distribution on the basis of the budget is not an administration or disbursement under the statute to which an injunction would be directed. Any school district in the state could receive more or less funds during the remainder of the year due to inaccuracies in its proposed budget. If a district receives more money than its entitlement it must refund the excess to the State General Fund. Equalization payments during the balance of the school year might have

the effect of augmenting sums to which a district was entitled in prior months but these are not damages for sums wrongfully withheld. It is simply a matter of adjusting a school district's budget to conform to its statutory share of the fund.

An injunction issued this date granting prospective relief will not violate the Eleventh Amendment.

/s/ E. L. Mechem
United States District Judge

---

(Caption Omitted in Printing)

(Filed November 14, 1975)

**Judgment and Injunction**

This case having come before the Court for trial on the merits and the Court having heard the evidence, reviewed the pleadings, and entered its opinion on October 7, 1975, and a supplemental opinion on this date, which opinions are hereby adopted as the findings of fact and conclusions of law;

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. Section 16(F), Chapter 8, Laws of New Mexico-1974 (§ 77-6-19(G), N.M.S.A., 1975 Interim Supplement) is declared to be unconstitutional under the supremacy clause of the United States Constitution because it is contrary to the Atomic Energy Community Act (42 U.S.C. 2301, et seq.) and interferes with the distribution of federal funds.

2. Plaintiff is and has been at all times since the enactment of said statute and particularly including the fiscal years commencing July 1, 1974 and July 1, 1975 entitled



to receive its State Equalization Guarantee Distributions under the same formula that applies to all other school districts in the State of New Mexico under the current statutory scheme. 77-6-19(A-F) N.M.S.A. (1975 Interim Supp.).

3. Defendants are enjoined from making the state equalization guarantee distributions to the Plaintiff school district in accordance with this unconstitutional subsection of the New Mexico Public School Finance Act from this day forward.

4. Defendants are enjoined from reducing or diminishing the state equalization guarantee distribution for the entire current fiscal year in any manner which would have the effect of establishing prior payments in this fiscal year as the school district's entitlement under the statutory formula.

5. That the defendants, and each of them be, and they hereby are, commanded to distribute to plaintiff during the current and future fiscal years, the full amount to which it is entitled under the foregoing declaratory orders of this judgment. Defendants are specifically directed to make the calculations required by 77-6-19(D) and (E), N.M.S.A. (1975 Supp.) with respect to plaintiff, in accordance with this Judgment, when the times come for making such calculations and to distribute to plaintiff the full amount of the State Equalization Guarantee distribution for the current fiscal year, computed in accordance with this Judgment, prior to June 30, 1976 as required by 77-6-19(F) N.M.S.A. (1975 Interim Supp.) until that statute is either amended or repealed.

6. That this Court shall retain jurisdiction over this cause to give such further necessary or proper relief based on the above declaratory orders as may be necessary in accordance with the provisions of 28 U.S.C. 2202 (until July 30, 1976).

/s/ E. L. Mechem
United States District Judge

(Caption Omitted in Printing)

(Filed October 7, 1975)

**Opinion of the Three Judge Court**

Judge Mechem, in his capacity as single district judge, has found in favor of the plaintiff on the Supremacy Clause grounds and has rejected defendants' challenge to the constitutionality of the Atomic Energy Communities Act. We now sit as a three-judge panel to decide whether the issues raised by the Third-Party complaint are within our jurisdiction. 28 U.S.C. § 2282.

There are several basic requirements for involving the jurisdiction of a three-judge district court:

1. There must be a case or controversy.

2. The relief sought must include a prayer for an injuiction restraining the enforcement of an Act of Congress for repugnance to the Constitution.

3. The constitutional questions raised must not be insubstantial.

The Third-Party complaint raises the same constitutional issues as the answer, but against the federal defendants. It alleges that if the plaintiff prevails against the defendants, Third-Party defendants are liable to the Third-Party plaintiff for all, or part of, the plaintiff's claim. This is a conclusory allegation without foundation in the factual allegations in the pleading. Defendants' theory of defense and indemnity contradict each other. If plaintiff prevails on his complaint, the single will have ruled against the defense's theory that the federal Act is unconstitutional. How, then, can defendant turn to another defendant and claim that because a single judge has ruled that the federal statute is constitutional and declared that the state cannot



reduce state aid to Los Alamos because it receives AEC funds, the federal government is liable to the state because the federal statute is unconstitutional for the same reasons asserted against the School Board in its answer? This is simply an attempt to have us review collaterally the opinion of a single district judge. The prayer requests an injunction requiring the Third-Party defendants to pay the plaintiff whatever funds are needed to operate the schools. There is no claim that the AEC is liable to the state for the amount of funds the state may be required to contribute to the school district. We think the Third-Party fails to state a claim under Rule 14.

Even if we look beyond the form of pleadings and attempt to construe the pleading with liberality, there is a serious issue of whether the state has standing to raise issues concerning the relationship between the AEC and Los Alamos School District. The AEC can remain in the case as a plaintiff in intervention. 28 U.S.C. 2403. Even if we were to find standing, a three-judge court would not be required because the injunctive relief requested does not have the effect of restraining the enforcement operation or execution of an Act of Congress. The relief requested by Third-Party plaintiffs is an injunction compelling the enforcement of an Act of Congress and is not required to be heard by a three-judge panel. 28 U.S.C. 2282. Now, Therefore,

IT IS ORDERED that the three-judge panel is dissolved and the Third-Party Complaint is remanded to Judge Mechem.

/s/ Oliver Seth
United States Circuit Judge

/s/ Howard Bratton
United States District Judge

/s/ E. L. Mechem
United States District Judge

(Caption Omitted in Printing)

(Filed October 7, 1975)

**Order**

The three-judge panel has remanded the Third-Party Complaint to me in my capacity as single district judge. I entertain the same doubts about the Third-Party Complaint as expressed in the opinion of the three-judge court. I have, however, passed on the merits of those claims when I ruled against the affirmative defenses in defendants' answer and that part of the opinion is incorporated by reference into this order. Now, Therefore,

It Is Ordered, Adjudged and Decreed that Third-Party plaintiffs take nothing and that the Third-Party Complaint is dismissed.

/s/ E. L. Mechem
United States District Judge



**APPENDIX D**

**Relevant Portions of New Mexico Public School Finance Act**

**77-6-1. Short title.**—Sections 77-6-1 through 77-6-46, New Mexico Statutes Annotated, 1953 Compilation may be cited at the "Public School Finance Act."

**77-6-2. Definitions.**—As used in the Public School Finance Act [77-6-1 to 77-6-46]:

A. "ADM" means average daily membership;

B. "average daily membership" means the total enrollment of students for each school day of the school year used, minus withdrawals of students, divided by the number of school days of the school year used. Withdrawals of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days;

C. "basic program ADM" means the average daily membership of qualified students in the basic program and includes the ADM in special education program Classes A and B, as defined in section 77-6-18.4 NMSA 1953, but excludes the full-time equivalent ADM in early childhood education programs and ADM in special education program Classes C and D, as defined in section 77-6-18.4 NMSA 1953;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four [4] through six [6];

E. "division" means the public school finance division of the department of finance and administration;

F. "full-time equivalent ADM" is that average daily membership calculated by applying to the ADM in an ap-

proved public school program the ratio of the number of hours per school day devoted to the program of six [6] hours or the number of hours per school week devoted to thirty [30] hours;

G. "early childhood education ADM" means the full-time equivalent ADM of students attending approved early childhood education programs;

H. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

I. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to ADM, full-time equivalent ADM, teacher, classroom or public school;

J. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

K. "qualified student" means a public school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half [½] or more of the minimum course requirements approved by the state board for public school students; and

(3) is at least six [6] years of age prior to 12:01 a.m.:

(a) on January 1 of the school year, if approved early childhood education programs are not provided for the student by the school district;

(b) on December 1, 1974, for the school year 1974-75, if approved early childhood education programs are provided for the student by the school district;



(c) on November 1, 1975, for the school year 1975-76, if approved early childhood education programs are provided for the student by the school district;

(d) on October 1, 1976, for the school year 1976-77, if approved early childhood education programs are provided for the student by the school district; or

(e) on September 1, 1977, for the school year 1977-78, and all succeeding school years, if approved early childhood education programs are provided for the student by the school district; and

L. "special education ADM" means the average daily membership in approved special education programs as defined in section 77-6-18.4 NMSA 1953.

• • •

77-6-14. **Membership reports.**—A. Each local school shall require each public school in its school district to keep accurate records concerning membership in the public school. The superintendent of each school district shall maintain the following reports for each twenty-day reporting period:

(1) the basic program ADM by grade in each public school;

(2) the early childhood education ADM;

(3) the special education ADM in each public school by classes as defined in section 77-6-18.4 NMSA 1953; and

(4) the full-time equivalent ADM for the following approved programs:

(a) vocational education; and

(b) bilingual-multicultural education.

B. The superintendent of each school district shall furnish to the division reports of the information required in paragraphs (1) through (4) of subsection A of this section

for the first forty [40] days of the school year, the first eighty [80] days of the school year and for the entire school year. The reports for the first forty [40] days and the first eighty [80] days shall be furnished within five [5] days of the close of the reporting period. The report for the entire school year shall be furnished not later than fifteen [15] days following the end of each school year. The chief shall furnish to the state superintendent the forty-day reports by December 1 of each year, the eighty-day reports by February 1 of each year and the entire school year report by July 1 of each year.

C. All information required pursuant to this section shall be on forms prescribed and furnished by the division. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district and shall be subject to inspection and audit at any reasonable time.

D. The chief shall withhold allotments of funds to any school district where the superintendent has failed to comply until the superintendent complies with and agrees to continue complying with requirements of this section.

E. The provisions of this section may be modified or suspended by the division for any school district or school operating under the Variable School Calendar Act [77-22-1 to 77-22-6]. The chief shall require ADM reports consistent with the calendar of operations of such school district or school and shall calculate an equivalent ADM for use in projecting school district revenue.

• • •

77-6-15. Public school fund.—A. The "public school fund" is created.

B. This fund shall be distributed to school districts in the following parts:

(1) state equalization guarantee distribution;

(2) transportation distribution; and



(3) supplemental distributions:

(a) out-of-state tuition;

(b) emergency; and

(c) program enrichment.

C. The distributions of the public school fund shall be made by the chief within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund unless otherwise provided by law.

• • •

77-6-16. Allocation limitation.—The chief shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

• • •

77-6-17. Payment to school districts.—The chief shall make payments of each distribution of the public school fund by warrant of the department of finance and administration drawn against the public school fund upon vouchers issued by the chief. When payments are made to county treasurers for school districts within the county, the county treasurer shall hold and allocate these funds solely for the use and benefit of the specific school district and purpose for which the allocation was made.

• • •

77-6-18. Program cost determination—Required information.—A. The program cost for each school district shall be determined by the chief in accordance with the provisions of the Public School Finance Act [77-6-1 to 77-6-46].

B. The chief is authorized to require from each school district the information necessary to make an accurate determination of the district's program cost.

• • •

**77-6-18.1. Program cost calculation.**—The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as (1) through (5) in this section by the instruction staff training and experience index and then adding the program units itemized at (6) and (7) in this section. The itemized program units are as follows:

(1) early childhood education;

(2) basic;

(3) special education, adjusted by subtracting the units derived from Class D special education ADM in private, nonsectarian, nonprofit training centers;

(4) vocational education;

(5) bilingual-multicultuural education;

(6) sparsity; and

(7) special education units derived from Class D special education ADM in private, nonsectarian, nonprofit training centers.

• • •

**77-6-18.2. Early childhood education program units.**—The number of early childhood education program units is determined by multiplying the early childhood education ADM by the cost differential factor 1.1.

• • •

**77-6-18.3. Basic program units.**—The number of basic program units is determined by multiplying the basic program ADM in each grade by the corresponding cost differential factor as follows:

| Grades | Cost differential factor |
|---|---|
| 1 through 3 | 1.1 |
| 4 through 6 | 1.0 |



| | |
|---|---|
| 7 through 9 | 1.2 |
| 10 through 12 | 1.4 |

• • •

**77-6-18.4 Special education program units.**—A. For the purpose of the Public School Finance Act [77-6-1 to 77-6-46], special education programs for exceptional children are those approved by the department of education and classified as follows:

(1) Class A programs, in which a specially trained teacher travels from class to class or school to school assisting teachers and students on a part-time basis and in which the ratio of students to teachers is prescribed by the department of education;

(2) Class B programs, in which a specially trained teacher is assigned to a classroom, called a "resource room," and works with students on a regular part-time basis and in which the ratio of students to techers is regulated by special education standards approved by the state board of education;

(3) Class C programs for moderately handicapped students who are either homebound or whose needs require a specially trained teacher working in a special classroom; the ratio of students to teachers in Class C programs is regulated by special education standards approved by the state board of education; and

(4) Class D programs for severely handicapped students, in which a specially trained teacher is assigned full-time to a special classroom and in which the ratio of students to teachers is regulated by special education standards approved by the state board of education; students in Class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of section 77-11-3.3 NMSA 1953.

B. All students assigned to the programs for exceptional children classified in subsection A of this section must have

been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department of education before the students can be counted in the determination of special education program units as provided in subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) the number of full-time specially trained teachers assigned to Class A programs multiplied by the cost differential factor 20;

(2) the number of resource rooms devoted to Class B programs multiplied by the cost differential factor 20;

(3) the special education ADM in Class C programs multiplied by the cost differential factor 1.9; and

(4) the special education ADM in Class D programs multiplied by the cost differential factor 3.8.

• • •

77-6-18.5. **Vocational education program units.**—The number of vocational education program units is determined by multiplying the full-time equivalent ADM in approved vocational education programs by the cost differential factor 0.8.

• • •

77-6-18.6. **Bilingual-multicultural education program units.**—The number of bilingual-multicultural education program units is determined by multiplying the full-time equivalent ADM of programs approved under the Bilingual Multi-Cultural Education Act [77-23-1 to 77-23-7] by the cost differential 0.5.

• • •

77-6-18.7. **Size adjustment program units.**—A. An approved school with ADM of less than 200 including early childhood education full-time equivalent ADM but excluding special education Class C and Class D ADM is eligible for additional program units. The number of additional program units to which a school district is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:



Elementary-Junior High Units

$$\left( \frac{\text{200-ADM}}{200} \right) \text{x } 1.0 \text{ x ADM} = \text{Units}$$

where ADM is equal to the average daily membership of an approved elementary or junior high school including early childhood education full-time equivalent average daily membership but excluding special education Class C and Class D average daily membership;

Senior High Units

$$\left( \frac{\text{200-ADM}}{200} \right) \text{x } 2.0 \text{ x ADM} = \text{Units}$$

where ADM is equal to the average daily membership of an approved senior high school excluding special education Class C and Class D average daily membership.

B. A school district with total ADM of less than 4,000 including early childhood education full-time equivalent ADM and special education ADM is eligible for additional program units. The number of additional program units to which a district is entitled under subsection B of this section is the number of district units computed in the following manner:

District Units

$$\left( \frac{\text{4000-ADM}}{4000} \right) \text{x } 0.15 \text{ x ADM} = \text{Units}$$

where ADM is equal to the total district average daily membership including early childhood education full-time

equivalent average daily membership and special education average daily membership.

• • •

**77-6-18.8. Instructional staff training and experience index—Definitions—Factors—Calculation.**—A. For the purpose of calculating the instructional staff training and experience index the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:



| Academic Classification | Years of Experience 0-2 | 3-5 | 6-8 | 9-15 | Over 15 |
|---|---|---|---|---|---|
| Bachelor's degree or less | .75 | .90 | 1.00 | 1.05 | 1.05 |
| Bachelor's degree plus 15 credit hours | .80 | .95 | 1.00 | 1.10 | 1.15 |
| Master's degree or bachelor's degree plus 45 credit hours | .85 | 1.00 | 1.05 | 1.15 | 1.20 |
| Master's degree plus 30 credit hours | .90 | 1.05 | 1.15 | 1.30 | 1.35 |
| Post-master's degree or master's degree plus 45 credit hours | 1.00 | 1.15 | 1.30 | 1.40 | 1.50 |

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the chief. The following calculations shall be computed:

(1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in subsection B of this section;

(2) add the products calculated in paragraph (1) of this subsection; and

(3) divide the total obtained in paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is .95 or less, the district's factor shall be no less than .95.

• • •

**77-6-19. State equalization guarantee distribution—Definitions—Determination of amount.**—A. The state equalization guarantee distribution is that amount of money dis-

tributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue" as used in this section means ninty-five per cent [95%] of receipts to the school district derived from the following:

(1) that amount produced by a school district property tax at the rate of eight dollars ninety-two and one-half cents ($8.925) per one thousand dollars ($1,000) of net taxable value of property allocated to the school district; and

(2) the school district's share of motor vehicle fees distributed in accordance with section 77-6-35 NMSA 1953.

C. "Federal revenue" as used in this section means ninety-five per cent [95%] of receipts to the school district derived from the following:

(1) the school district's share of forest reserve funds distributed in accordance with section 77-6-35 NMSA 1953:

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") or an amount equal to the revenue the district was entitled to receive if no application were made for such funds; and

(3) grants from the federal government to public secondary schools authorized by the United States Vocational Education Act of 1963, as amended (20 U.S.C. 1241—1391).

D. To determine the amount of the state equalization guarantee distribution the chief shall:

(1) calculate the number of program units to which each school district is entitled using membership and other required reports for the first forty [40] days of the school year and for the first eighty [80] days of the school year;



(2) using the higher number of the result of the calculation in paragraph (1) of this subsection, establish and total program cost of the school district; and

(3) calculate the local and federal revenues as defined in this section; and

(4) deduct the sum of the calculations made in paragraph (3) of this subsection from the program cost established in paragraph (2) of this subsection.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deduction made in paragraph (4) of subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee is being computed. In the event that a district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund.

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in section 77-6-19 NMSA 1953 and Laws 1974, chapter 8, section 22, if a school district receives funds, under section 2391 of Title 42 U.S.C.A., and if the federal government takes into consideration grants authorized by sections 236 through 240 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district, the amount of the state equalization guarantee distribution for the sixty-third fiscal year shall be the same as the amount of state revenues except for transportation and texbook revenues provided in the sixty-second fiscal year multiplied by the save harmless percentage of subsection F of Laws 1974, chapter 8, section 22, and

further multiplied by the ratio of the full-time equivalent ADM for the sixty-third fiscal year to the full-time equivalent ADM for the sixty-second fiscal year. For the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

$$\frac{\text{fiscal year program cost for the years for which the state equalization guarantee distribution is being computed}}{\text{prior fiscal year program cost}} \times \text{prior fiscal year state equalization guarantee distribution} = \text{fiscal year state equalization guarantee distribution}$$

for the year for which the state equalization guarantee distribution is being computed.

• • •

**77-6-22. Transportation distribution.**—A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district for the to-and-from school transportation costs of students in grades one [1] through twelve [12] attending public school within the school district.

B. The transportation distribution shall be allocated to each school district according to an objective schedule developed by the state transportation director and approved by the state board.

C. In the event the sum of the proposed transportation allocations to each school district exceeds the amounts in the transportation distribution, each school district to receive an allocation shall share in a reduction in the proportion that each school district's forty-day average daily membership bears to the forty-day average daily membership of all school districts to receive allocations.

D. Local school boards, with the approval of the state transportation director, may provide additional transportation services pursuant to section 77-14-2 NMSA 1953 to meet established program needs.



• • •

**Relevant Portions of Atomic Energy Communities Act**

SUBCHAPTER I.—GENERAL PROVISIONS

**§ 2301. Congressional declaration of policy**

It is declared to be the policy of the United States of America that Government ownership and management of the communities owned by the Atomic Energy Commission shall be terminated in an expeditious manner which is consistent with and will not impede the accomplishment of the purposes and programs established by the Atomic Energy Act of 1954. To that end, it is desired at each community to—

(a) facilitate the establishment of local self-government;

(b) provide for the orderly transfer to local entities of municipal functions, municipal installations, and utilities; and

(c) provide for the orderly sale to private purchasers of property within those communities with a minimum of dislocation.

• • •

**§ 2302. Congressional findings**

The Congress of the United States makes the following findings concerning the communities owned by the Atomic Energy Commission:

(a) The continued morale of project-connected persons is essential to the common defense and security of the United States.

(b) In issuing rules and regulations required or permitted under this chapter for the disposal of the com-

munities and in disposing of the communities in accordance with the provisions of this chapter and in accordance with the rules and regulations required or permitted by this chapter, the Commission is acting under authority delegated to it by the Congress.

(c) Funds of the United States may be provided for the disposal of the communities and for assistance in the operation of the communities thereafter under conditions which will provide for the common defense and promote the general welfare.

• • •

**§ 2303. Purpose of chapter**

It is the purpose of this chapter to effectuate the policies set forth above by providing for—

(a) the maintenance of conditions which will not impede the recruitment and retention of personnel essential to the atomic energy program;

(b) the obligation of the United States to contribute to the support of municipal functions in a manner commensurate with—

(1) the fiscal problems peculiar to the communities by reason of their construction as national defense installations, and

(2) the municipal and other burdens imposed on the governmental or other entities at the communities by the United States in its operations at or near the communities;

(c) the opportunity for the residents of the communities to assume the obligations and privileges of local self-government; and

(d) the encouragement of the construction of new homes at the communities.



**§ 2304. Definitions**

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter—

(a) The term "Commission" means the Atomic Energy Commission.

(b) The term "community" means that area at—

(1) Oak Ridge, Tennessee, designated on a map on file at the principal office of the Commision, entitled "Minimum Geographic Area, Oak Ridge, Tennessee", bearing the legend "Boundary Line, Minimum Geographic Area, Oak Ridge, Tennessee" and marked "Approved, 21 April 1955, K. D. Nichols, General Manager"; or

(2) Richland, Washington, designated on a map on file at the principal office of the Commission, entitled "Minimum Geographic Area, Richland, Washington", bearing the legend "Boundary Line, Minimum Geographic Area, Richland, Washington" and "marked "Approved, 21 April 1955, K. D. Nichols, General Manager"; or

(3) Los Alamos, New Mexico, designated on a map on file at the principal office of the Commission, entitled "Minimum Geographic Area, Los Alamos, New Mexico," bearing the legend "Boundary Line, Minimum Geographic Area, Los Alamos, New Mexico" and marked "Approved, April 5, 1962, A. R. Luedecke, General Manager."

(c) The term "house" includes the lot on which the house stands.

(d) The term "member of a family" means any person who, on the first offering date, resides in the same dwelling unit with one or more of the following relatives (including those having the same relationship through marriage or

legal adoption) : spouse, father, mother, grandfather, grandmother, brother, sister, son, daughter, uncle, aunt, nephew, niece, or first cousin.

(e) The term "mortgage" shall include deeds of trust and such other classes of lien as are given to secure advances on, or the unpaid purchase price of real estate under the laws of the State in which the real estate is located.

(f) The term "municipal installation" includes, without limitation, schools, hospitals, police and fire protection systems, sewerage and refuse disposal plants, water supply and distribution installations, streets and roads, libraries, parks, playgrounds and recreational means, municipal government buildings, other properties suitable for municipal or comparable local public service purposes, and any fixtures, equipment, or other property appropriate to the operation, maintenance or repair of the foregoing.

(g) The term "occupant" means a person who, on the date on which the property in question is first offered for sale, is entitled to residential occupancy of the Government-owned house in question, or of a family dwelling unit in such house, in accordance with a lease or license agreement with th Commission or its property-management contractor.

(h) The term "offering date" means the date the property in question is offered for sale.

(i) The term "project area" means that area which on August 4, 1955 constitutes the Federal area at Oak Ridge, Tennessee, or Hanford, Washington, or that area which, on the date Los Alamos is included within this chapter, constitutes the County of Los Alamos, New Mexico, excluding therefrom, however, that land which is, on said date, under the administrative control of the National Park Service of the Department of the Interior.

(j) The term "project-connected person" means any person who, on the first offering date, is regularly employed at the project area in one of the following capacities:



(1) An officer or employee of the Commission or any of its contractors or subcontractors, or of the United States or any agency thereof (including members of the Armed Forces), or of a State or political subdivision or agency thereof;

(2) An officer or employee employed at a school or hospital located in the project area;

(3) A person engaged in or employed in the project area by any professional, commercial, or industrial enterprise occupying premises located in the project area; or

(4) An officer or employee of any church or nonprofit organization occupying premises located in the project area.

(k) The term "resident" means any person who, on the date on which the property in question is first offered for sale is either—

(1) an occupant in a residential unit designated for sale at the community, or

(2) a project-connected person who is entitled, in accordance with a lease or similar agreement, to residential occupancy of privately owned rental housing in the community.

(l) The term "utility" means any electrical distribution system, any natural gas distribution system, any public transportation system, or any public communication system, and any fixtures, equipment, or other property appropriate to the operation, maintenace or repair of the foregoing.

(m) The terms "single" and "single family" when used in connection with "house" or "residential property" shall include each separate unit of a residential structure which the Commission has classified as a residential structure

containing two or more separate single family units pursuant to section 2331(c) of this title.

• • •

**§ 2305. Powers of Atomic Energy Commission**

The Commission shall have all powers conferred by the Atomic Energy Act of 1954, including the power to make, promulgate, issue, rescind, and amend such rules, regulations, and delegations as may be appropriate to carry out the provisions of this chapter and shall be subject to the limitations contained in sections 2201 to 2209 of this title. Nothing contained in this chapter shall impair the powers vested in the Commission by the Atomic Energy Act of 1954, as amended, or any other law.

**§ 2312. Appropriations**

(a) No appropriation shall be made to carry out the provisions and purposes of this chapter unless previously authorized by legislation enacted by Congress.

(b) There are authorized to be appropriated the sum of $518,000 at Oak Ridge, the sum of $2,215,000 at Richland and the sum of $8,719,000 at Los Alamos for construction, modification, or expansion of municipal installations and utilities authorized to be transferred pursuant to sections 2371 to 2375 and 2381 to 2386 of this title.

• • •

SUBCHAPTER VIII.—LOCAL ASSISTANCE

**§ 2391. Assistance to governmental entities—Annual assistance payments; extensions; determination of amount and recipient**

(a) From the date of transfer of any municipal installation to a governmental or other entity at or for the community, the Commission shall, for a period of ten years, make annual assistance payments of just and reasonable



sums to the State, county, or local entity having jurisdiction to collect property taxes or to the entity receiving the installation transferred hereunder: *Provided, however,* with respect to the Cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District, the Commission is authorized to continue to make assistance payments of just and reasonable sums after expiration of such ten-year period. In determining the amount and recipient of such payments the Commission shall consider—

(1) the approximate real property taxes and assessments for local improvements which would be paid to the governmental entity upon property within the community if such property were not exempt from taxation by reason of Federal ownership;

(2) the maintaining of municipal services at a level which will not impede the recruitment or retention of personnel essential to the atomic energy program;

(3) the fiscal problems peculiar to the governmental entity by reason of the construction at the community as a single purpose national defense installation under emergency conditions;

(4) the municipal services and other burdens imposed on the governmental or other entities at the community by the United States in its operations in the project area; and

(5) the tax revenues and sources available to the governmental entity, its efforts and diligence in collection of taxes, assessment of property, and the efficiency of its operations.

SPECIAL INTERIM PAYMENTS

(b) Special interim payments may be made under the provisions of this section to any governmental entity which——

(1) has a special burden due to the requirements under law imposed upon it in assisting in effectuating the purposes of this chapter for which it will not otherwise receive adequate compensation or revenues; or

(2) will suffer a tax loss or lapse in place of which it will not receive any other adequate revenues until the new governmental entities contemplated by this subchapter are receiving their normal taxes and performing their normal functions.

PAYMENTS FOR SPECIAL BURDENS

(c) Payments made under this section shall be payments made for special burdens imposed on the local governmental entities in accordance with the second sentence of section 2208 of this title. Payments may be made under this section notwithstanding the provisions of sections 236 to 244, 245 of Title 20.

RECOMMENDATIONS FOR FURTHER ASSISTANCE PAYMENTS

(d) With respect to any entity not less than six months prior to the expiration of the ten-year period referred to in subsection (a) of this section (or not less than six months prior to June 30, 1979, in the case of the Cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District), the Commission shall present to the Joint Committee on Atomic Energy its recommendations as to the need for any further assistance payments to such entity.

REDUCTION OR TERMINATION OF ASSISTANCE PAYMENTS; DETERMINATION BY COMMISSION OF FINANCIAL SELF-SUFFICIENCY

(e) In exercising the authority of subsection (a) of this section the Commission shall assure itself that the governmental or other entities receiving assistance hereunder utilize all reasonable, available means to achieve financial



self-sufficiency to the end that assistance payments by the Commission may be reduced or terminated at the earliest practical time.

• • •

**§ 2393. Payments in anticipation of services; withholding of payments**

The payments made pursuant to section 2391 of this title to transferees of municipal installations are in anticipation that the respective recipients of those payments furnish, or have furnished, for the community, the school, hospital, or other municipal services in respect of which the payments are made. Any such payment may be withheld, in whole or in part, if the Commission finds that the receipient is not furnishing such services for any part of the area so designated.

• • •

**§ 2394. Contract to make payments**

The Commission is authorized, without regard to section 665 of Title 31, to enter into a contract with any governmental or other entity to which payments are required or authorized to be made pursuant to section 2391 of this title, obligating the Commission to make to such entity the payments directed or authorized to be made by section 2391 of this title: *Provided, however,* That the term of such contracts, in the case of the Cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District, shall not extend beyond June 30, 1979.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

---

**No. 77-513**

---

LOS ALAMOS SCHOOL BOARD, *Petitioner,*

v.

HARRY WUGALTER, Chief of Public School Finance Division of the Department of Finance and Administration; VINCE MONTOYA, Director of the Dept. of Finance and Admin., LEONARD J. DELAYO, Superintendent of Public Instruction of the State of New Mexico, JESSE D. KORNEGAY, State Treasurer of the State of New Mexico, *Respondents.*

---

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

---

JEFF BINGAMAN
Post Office Box 2208
1 Jefferson Place
Santa Fe, New Mexico
87501
Telephone: (505) 988-4421
*Attorney for Respondents*

CAMPBELL, BINGAMAN
AND BLACK, P.A.
Post Office Box 2208
1 Jefferson Place
Santa Fe, New Mexico
87501

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

## TABLE OF CONTENTS


Page

OPINIONS BELOW ..... 1

RESTATEMENT OF THE QUESTION PRESENTED ..... 2

RESTATEMENT OF THE CASE ..... 2

REASONS FOR DENYING THE WRIT

I. GIVEN CONGRESS' COMPLETE SILENCE WITH RESPECT TO THE RELATION BETWEEN THE ATOMIC ENERGY COMMUNITY ACT AND STATE EDUCATIONAL FUNDING, CHIEF JUDGE LEWIS' DECISION WAS A CORRECT INTERPRETATION OF THE LAW AND LED TO A FAIR AND EQUITABLE RESULT ..... 6

II. THE ISSUE PRESENTED BY THIS CASE REGARDING THE INTERPRETATION AND ALLEGED CONFLICT BETWEEN TWO STATUTES IS NOT SUFFICIENTLY IMPORTANT TO MERIT THIS COURT'S CONSIDERATION .. 13

CONCLUSION ..... 14


## TABLE OF AUTHORITIES

CASES:


*Hines* v. *Davidowitz*, 312 U.S. 52 (1941) .....9, 10
*Jones* v. *Rath Packing Co.*, —— U.S. ——, 97 S. Ct. 1305 (1977) .....11, 12
*Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470 (1974) .. 8
*Perez* v. *Campbell*, 402 U.S. 637 (1971) .....10, 11
*Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) ..... 12
*San Antonio [Independent] School District* v. *Rodriguez*, 411 U.S. 1 (1973) ..... 8, 9


CONSTITUTIONAL PROVISION:


U.S. Const. art. VI, § 2 (Supremacy Clause) .....*passim*

Page

UNITED STATES CODE:

42 U.S.C. §§ 2301-94 (1976) (The Atomic Energy Community Act of 1955) ..... 4

STATE STATUTES:

N.M. Stat. Ann. §§ 77-6-1 to -19(G) (Interim Supp. 1975) ..... 3, 4, 5

RULES:

Rules of Supreme Court, Rule 19-1(b)

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

---

No. 77-513

---

LOS ALAMOS SCHOOL BOARD, *Petitioner,*

v.

HARRY WUGALTER, Chief of Public School Finance Division of the Department of Finance and Administration; VINCE MONTOYA, Director of the Dept. of Finance and Admin., LEONARD J. DELAYO, Superintendent of Public Instruction of the State of New Mexico, JESSE D. KORNEGAY, State Treasurer of the State of New Mexico, *Respondents.*

---

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

---

### OPINIONS BELOW

The opinion of the court of appeals is reported in 557 F.2d 709 (10th Cir. 1977). The order of the court below denying Petitioner's motion for a rehearing *en banc* or alternatively for a rehearing is not reported. The Court rendered no opinion with the order.

The opinions of the District Court finding for the Petitioner, granting the relief requested, and dismiss-

ing defendants' third-party claims against certain federal officials are not reported.

## RESTATEMENT OF THE QUESTION PRESENTED

Contrary to Petitioner's assertion in its statement of the question presented, New Mexico has not reduced its funding of the Los Alamos School District. Under the challenged subsection Los Alamos has received more state school support each year than in any previous year. The only absolute reduction in school funding which Los Alamos has experienced has been a reduction in federal funding. Accordingly, the questions properly stated are as follows:

Does the Atomic Energy Community Act prohibit New Mexico from providing state school funds to Los Alamos on a different basis than it provides school funds to poorer districts?

Alternatively, does the Atomic Energy Community Act require New Mexico to match increases in its funding to poorer school districts with commensurate increases to Los Alamos, the wealthiest district in the State?

## RESTATEMENT OF THE CASE

The Los Alamos School Board's statement of the case requires amendment and enlargement because it fails to discuss the following relevant aspects of the case:

Because the ability to raise revenues from local tax sources has traditionally varied across local school districts throughout New Mexico, substantial disparities



in educational opportunities and educational expenditures have existed among these local school districts. The 1974 State Legislature took an important step to alleviate the inequitable conditions found in the State by adopting an "equalization funding formula" that would insure that no child would be penalized by virtue of his residence in a poor school district. N.M. Stat. Ann. § 77-6-19 *et seq.* (1975 Interim Supp.)

Although that funding formula is highly complex in operation, its purpose and philosophy are simple. Rather than arbitrarily provide State funds to local districts on a per capita or per student basis, without recognition for local need, the new State formula begins by deriving a need factor for each district. This need factor is the difference between the cost of operating programs in the particular district (taking into account, for example, teacher salaries), and subtracting therefrom the amount of local funds available. (Although every school district taxes at the maximum legal rate, the amount of revenues generated by each district is highly disparate as a result of *inter alia* differing property values.) The funding formula, then, guarantees to each district that the amount of state funds it receives will be the difference between its program costs and the local monies available. In this way, the State funding acts to "equalize" differences among wealthy and poor districts; thus, where there are two districts with the same need factor, the poorer district will receive more State funds.

While the equalization funding formula contemplates conditions found in all other local school districts within the State, the Legislature determined that the formula would be wholly inapplicable to the unique

conditions found in Los Alamos. Los Alamos is not only the wealthiest school district in the State, but its wealth results from the infusion of funds pursuant to the Atomic Energy Community Act of 1955, 42 U.S.C. §§ 2301-94 (1976). As a result, should Los Alamos have been funded in accordance with the general provisions of the equalization funding formula, this would have entailed Los Alamos receiving a windfall and have completely thwarted the purposes of the equalization formula. District Judge M chem identified this inherent problem in his Opinion:

> "One inharmonious aspect of the two funding schemes is that federal funds are used to retain highly qualified and experienced teachers gives the school district a higher teacher training and experience factor, thereby increasing the state's equalization guarantee."

Tr. Vol. I at 343.

To remedy the problem, the Legislature enacted a separate provision to the formula (N.M. Stat. Ann. § 77-6-19(G) (Interim Supp. 1975)) to insure that Los Alamos would be treated fairly while allowing the goals of the formula to be realized. This separate provision provided that Los Alamos would continue to receive adequate State funding by insuring an increase in funding to match increased enrollment for 1974-75 school year (the first year of the new equalization funding formula) and additional increases in subsequent years to match both increases in enrollment and increases in program costs.

Plaintiff School Board contends the different method of funding Los Alamos School District violates the Atomic Energy Community Act of 1955 and is therefore unconstitutional under the Supremacy Clause. Defendants submit, as the Tenth Circuit held, that absent a showing of congressional intent which is *in fact* being frustrated by the State statute, the Supremacy Clause does not render the State statute unconstitutional.



The Los Alamos School Board cannot argue, and does not argue, that the state funding of the Los Alamos School District is unreasonably low. Its only claim is that state funding of Los Alamos is "different" from state funding of other districts. Specifically, it asserts that under the challenged subsection (N.M. Stat. Ann. §77-6-19(G) (Interim Supp. 1975)) of the New Mexico Public School Finance Act, it does not share in the increased funding which the State has appropriated for poorer districts in the State.

The primary purpose of the Atomic Energy Community Act is to maintain conditions in atomic energy communities "which will not impede the recruitment and retention of personnel essential to the Atomic Energy Program." At trial Los Alamos School Board made no showing that the challenged state funding of Los Alamos had the effect of impeding or raising an obstacle to the accomplishment of Congress' purpose in passing the Atomic Energy Community Act. In fact, the testimony of Kenneth Braziel, area manager of the Los Alamos area office of the Energy Resource Development Administration ("ERDA"), formerly the Atomic Energy Commission, that ERDA was not prepared to state that the state funding level was inconsistent with the Atomic Energy Community Act purposes. Another fact which came out at the trial at this same point is that the federal funding of Los Alamos School District decreased during the period in

question while the challenged state funding was increasing each year. Tr. of Proceedings R. Vol. IV at 29.

The record in the trial court is clear that New Mexico has not reduced its funding to the Los Alamos School Board in any year as a result of adoption of the challenged statute. Indeed, New Mexico has continued to fund the Los Alamos School District at a high level in comparison to most districts in the State. Tr. of Proceedings, R. Vol. IV at 62-70; Defendant's Exhibits G, H, I, J, K, L; R. Vol. II at 398-403. In fact, New Mexico actually *increased* while the federal government has *reduced* its funding to Los Alamos in the year in question. Tr. of Proceedings R. Vol. IV at 29.

## REASONS FOR DENYING THE WRIT

### I

### GIVEN CONGRESS' COMPLETE SILENCE WITH RESPECT TO THE RELATION BETWEEN THE ATOMIC ENERGY COMMUNITY ACT AND STATE EDUCATIONAL FUNDING, CHIEF JUDGE LEWIS' DECISION WAS A CORRECT INTERPRETATION OF THE LAW AND LED TO A FAIR AND EQUITABLE RESULT.

The present case involves the interpretation of two statutes: the Atomic Energy Community Act of 1955 ("AECA") and the New Mexico Public School Finance Act. Neither Act has been interpreted by any court previously.

Chief Judge Lewis, speaking for the Tenth Circuit Court of Appeals, held that the efforts of New Mexico to accommodate to its unique school funding problem did not contravene the AECA. In so doing, he recognized that the district court had failed to comprehend that there can be no Supremacy Clause violation unless



the State statute actually impedes an express federal purpose. After reviewing the facts and the state and federal laws Chief Judge Lewis stated that:

> "We are reluctant to strike down state legislation in the face of complete congressional silence. . . ."

He gave four primary reasons why the challenged state statute does not offend the Supremacy Clause:

> "[P]laintiff made no attempt to show that New Mexico's level of funding has impeded or would impede the recruitment or retention of necessary personnel;
>
> subsection 19(G) [the challenged statute] provides for increases in state aid as plaintiff's enrollment and program costs increase;
>
> the New Mexico statutory scheme does not impair Congress' policy of completely removing itself from the managing and funding of atomic energy communities since plaintiff would be eligible for increased state aid if AECA funds were terminated; and
>
> *in San Antonio* [*Independent*] *School District* v. *Rodriguez*, 411 U.S. 1, 42, the Supreme Court emphasized that state school finance laws 'should be entitled to respect.' "

The only point raised by Petitioner to support its request that this Court grant a writ of certiorari is the contention that the Court of Appeals' decision is "wholly inconsistent with clear principles announced by this Court" in several other cases. Petition, page 6. To hold, as Petitioner requests, that the State law contravenes the Supremacy Clause would be to go much further than Congress has chosen to in the AECA. Any decision other than that rendered by Chief Judge

Lewis based on the facts of this case would be contrary to the established principles articulated by this Court; none of the cases relied upon by Petitioner is to the contrary.

In support of its position, Petitioner relies upon *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470 (1974), which involved the question of whether Ohio's trade secret laws were in conflict with federal patent laws. The Court of Appeals for the Sixth Circuit held that the state law conflicted with the patent laws. This Court reversed on the ground that the area of trade secret protection was not pre-empted by the federal patent laws.

Far from being authority for Petitioner's point of view, *Kewanee* is strong authority for the position being advanced here by Respondents. In holding as it did, this Court stated:

> "Congress, by its silence over these many years, has seen the wisdom of allowing the States to enforce trade secret protection. Until Congress takes affirmative action to the contrary, States should be free to grant protection to trade secrets."

416 U.S. at 493.

This analysis was correctly followed and applied by Chief Judge Lewis in his Opinion in the present case. Congress has not specified any purpose which has shown to be contradicted by the State law and until Congress does take such action the State law is "entitled to respect." *San Antonio* [*Independent*] *School District* v. *Rodriguez*, 411 U.S. 1 (1973). As Chief Judge Lewis stated this same point in the present case, "We are reluctant to strike down state legislation in the face of complete congressional silence. . . ."



None of the other cases relied upon by Petitioner are availing. For example, in *Hines* v. *Davidowitz*, 312 U.S. 52 (1941), suit was brought to enjoin the enforcement of the Pennsylvania Alien Registration Act, which required aliens to register in a manner wholly different from the federal registration requirements for aliens. The question addressed by this Court in the *Hines* case was whether Congress, in adopting a comprehensive federal statute for regulation of aliens, precluded state action such as that taken by Pennsylvania. Concluding that the federal law was a "single integrated and all embracing system" for the regulation of aliens, the Court stated the Pennsylvania Act could not stand:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. And in that determination, it is of importance that this legislation is in a field which affects international relations, the one aspect of our government that from the first has been most generally conceded imperative to demand broad national authority."

312 U.S. at 67-68.

In light of the circumstances in the *Hines* case, it is difficult to see how Petitioner can cite the case as authority for its position here. In *Hines* the subject of the state legislation invaded foreign affairs, an area originally intended to be handled at the national level. In the present case the subject of the state legislation is school funding, a subject recognized by this Court in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973) to be an area of concern traditionally left to the states and where state statutes

"should be entitled to respect." Similarly, in the *Hines* case both the federal and State statutes attempted a comprehensive regulation of the same area of concern, *i.e.*, activities of aliens. In the present case the State statute attempts to allocate State school funds equitably among districts with consideration for the unique conditions of each, while the federal statute is nothing but a broad authorization to a federal agency to make funds available to local governmental entities as the federal agency determines they are needed. By no stretch of the imagination can the conflict between state and federal law which was present in the *Hines* case be identified here.

Petitioner's reliance upon the case of *Perez* v. *Campbell*, 402 U.S. 637 (1971), as authority for its claim that Chief Judge Lewis' decision is incorrect, is also misplaced. The *Perez* case involved a challenge to part of Arizona's motor vehicle safety responsibility statute on the basis that it contravened the federal Bankruptcy Act and was therefore unconstitutional. The portion of the state statute which was ultimately declared by the Court to be in violation of the Supremacy Clause was the section which said that an uninsured motorist's license and registration could be suspended if a judgment against the motorist remained unsatisfied for 60 days, and that was the case even if the judgment had been discharged in bankruptcy. The Court concluded that the purpose of the state statute was to protect the public from financially irresponsible drivers and that continuing to deny driving privileges to such persons contradicted the purpose of the Bankruptcy Act, *i.e.*, to "give debtors a new opportunity in life and a clear field for future efforts, unhampered by the pressure and discouragement of pre-existing debt." 402 U.S. at 648.



The *Perez* case is easily distinguishable from the present case in that it involved a state and federal statute with clearly contradictory purposes. The federal law was intended to give debtors a new start while the state law was intended to continue denying them the right to drive until they had satisfied their previous debt. In the present case the purpose of the federal law is to provide additional funds to the Los Alamos School District over and above the level as guaranteed by the State provision. The fact that the State statute takes into consideration the effect of federal law in attempting to carry out its purpose does not create a conflict between the two statues.

The most recent case cited by Petitioner which is claimed to be in conflict with Judge Lewis' decision is *Jones* v. *Rath Packing Co.*, —— U.S. ——, 97 S. Ct. 1305 (1977). In the *Jones* case, the State of California ordered packages of bacon and flour removed from sale because their net weight was less than the net weight stated on the packages, in violation of a California weight labeling statute. Suit was brought to enjoin the California officials from enforcing the state law. The federal district court enjoined enforcement of the law on the basis that as applied to the bacon it contravened the provisions of the Wholesome Meat Act and as applied to flour it contravened the Fair Packaging and Labeling Act. The decision was upheld by the Court of Appeals for the Ninth Circuit and was later affirmed by this Court.

The federal statutes involved in the *Jones* case are anything but analogous to the federal statute involved here. In the *Jones* case both federal statutes contained specific provisions invalidating state legislation which

imposed "different" requirements. In the Atomic Energy Community Act there is no language which can be construed as setting forth congressional intention on how the Act is to be accommodated with state law. The precise language of the statutes involved in the *Jones* case is conspicuously absent from the federal law which Petitioner would rely upon in this case. Also it should be pointed out that the congressional purpose of establishing uniformity in packaging so that valid comparisons could be made by customers was being frustrated in the *Jones* case. No such federal purpose is contained in the Atomic Energy Community Act and no evidence was presented that the State statute being challenged would frustrate any federal purpose in the present case.

This brief review of the four cases relied upon by Petitioner clearly demonstrates that they offer no support for reversal of Chief Judge Lewis' decision. In each of the four cases this Court adhered to the principle that, "the historic police powers of the States were not to be superceded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). There is no "clear and manifest purpose of Congress" to invalidate New Mexico's state statute providing for distribution of state school funds. In fact, the federal legislation relied upon by Petitioner contains no purpose which New Mexico's action has been shown to frustrate. Chief Justice Lewis' decision does not conflict with prior decisions of this Court and there is no basis in any prior decision which would justify issuing the writ of certiorari requested by Petitioner.



## II

**THE ISSUE PRESENTED BY THIS CASE REGARDING THE INTERPRETATION AND ALLEGED CONFLICT BETWEEN TWO STATUTES IS NOT SUFFICIENTLY IMPORTANT TO MERIT THIS COURT'S CONSIDERATION.**

This case involves the interpretation of a federal statute which never before has been the subject of judicial interpretation and which, by its own language, has application only to three school districts in the nation. (The AECA was passed in 1955 to provide for the unique situation caused by the federal government ownership and mangement of two communities, Oakridge, Tennessee and Richland, Washington; in 1962 the legislation was amended to cover Los Alamos, New Mexico as well.) The case also involves the interpretation of a state statute which has application to no one but the Plaintiff School District. Similarly, the factual context in which the case arises is complex and unique, since the challenged state statute is an attempt to accommodate state law to a peculiar situation while still carrying out the purposes of the state law, *i.e.*, to increase and equalize funding among poor districts in the state.

In exercising its sound judicial discretion, this Court should give adequate recognition to the uniqueness of the factual and legal context in which this case arises. The "special and important reasons" generally put forward to this Court as a basis for issuance of a writ of certiorari are totally lacking in this case.

## CONCLUSION

For the reasons stated this Court should decline to review this case by writ of certiorari.

Respectfully submitted,

CAMPBELL, BINGAMAN AND BLACK, P.A.
JEFF BINGAMAN
Post Office Box 2208
Santa Fe, New Mexico 87501

*Attorneys for Respondents*

DATED: November 3, 1977